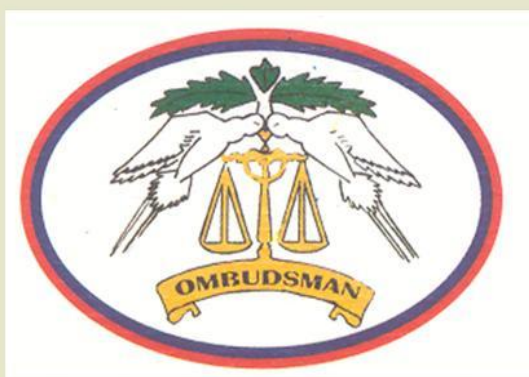




REPUBLIC OF SEYCHELLES

**ANNUAL REPORT
OF THE
OMBUDSMAN**



**“The Ombudsman—
A Fourth Arm of the State”**

**FOR THE YEAR ENDING
31st December 2020**



Message from the Ombudsman

The Ombudsman – A Fourth Arm of the State

This Annual Report opens a small window into the complex and often misunderstood role of the constitutional office of the Ombudsman with the noble ambition of ensuring *'a public service that is fair, open, accountable and effective'* – the basic tenets of good governance.

This year again, the report sets out the thematic activities of the Office as well as some of the issues that were subjected to scrutiny by our team of investigators in 2020. It brings the 'invisible' work of this Office to the attention of the arms of government charged with making the ultimate difference for the citizen. Public officers criticized for their actions can draw from the Ombudsman's findings and recommendations to avoid making the same mistakes again. In this way, public services can be improved for the greater good.

This report catalogues an eventful and memorable 2020 – although the jury may still be out on whether it may be qualified good. The COVID-19 pandemic, officially declared on 12th March, triggered a global shut down of international travel as airports closed and aircraft were grounded. Our tourism-dependent economy took a direct hit that threatened our very existence as a sovereign and economically and financially independent state. 2021 augurs no better!

2020 was also a year of democratic change – the first transfer of power in the Third Republic. The transition brought a renewed interest in our Constitution and a better appreciation of the constitutional institutions that have long remained unknown, invisible and unrecognised for their true role in our Republic.

The Ombudsman is one such institution first created in 1993. Its role is to investigate actions and malpractices, including fraud and corruption and human rights violation, by public entities and officers and scrutinise laws passed by the Legislature and Executive to ensure that they are in line with the Constitution.

The Ombudsman can be likened to a 'fourth arm' of the State, charged with keeping a practical and watchful eye on the public service delivered by the army of public



officers working under the orders and supervision of the executive, legislative and judicial arms of the State.

Whether investigating citizens' complaints or acting on its own motion, the Ombudsman focuses on service delivery at the administrative level – offering an independent and alternative dispute resolution system that works outside the legal system and outside the political arena to keep maladministration in check and improve the services delivered by public officers running the state's daily show. In performing that task, the Ombudsman is neither judge nor politician but an independent arbitrator, uncluttered by political or legal constraints, and free to focus on the alternative resolution of the administrative shortcoming.

The Ombudsman is not a politician. Unlike members of the Executive and the Legislature, both creatures of politics in our Third Republic, chosen by the electorate for party political considerations for fixed five-year periods, I play no political role. While they may represent different political families, as observed in the 'co-habitation' from September 2016 to August 2020, the two institutions have always come from the same political party and work hand in hand, sometimes straining the principle of separation of powers. Political expediency can sometimes exert pressure on both politicians and disgruntled citizens in their reaction to complaints of maladministration.

The Ombudsman is independent and not influenced by political considerations or motivations. This allows a greater scope of action, unconstrained by any desire to remain popular to win acclaim or the next elections. The issues can be better appreciated and a resolution brought that is unbiased and uninterested, based on what is needed to fix the problem in the wider national interest.

The Ombudsman is not a judicial officer although, like a judge, the Ombudsman is appointed through the same independent selection process for a seven-year mandate designed to not coincide with the electoral calendar. The Office is not a court of law. I cannot be asked to decide on liability or culpability nor can I award damages or punish any fault. I cannot change the law or forcibly change a decision taken by any public officer or demand that any position or decision be changed.

But unlike the judiciary, which can only exercise its powers of review when matters are placed before it within the confines and constraints of what the law provides framed within legal rules of procedure, the Ombudsman can investigate any complaint. I can even act on my own accord to investigate an action or an omission where I feel that something may have gone wrong.



The Ombudsman is the only institution, other than the National Assembly, with its own procedural code set out in the Constitution. Schedule 5 states what the Ombudsman can and cannot do and where it can and must go with the conclusions and findings made in the course of investigations into complaints.

There is no doubt that the Constitution never intended the Ombudsman to bite. It does not give me any teeth. At the end of my investigation, I can only form opinions on a decision or action for the limited set of reasons elaborated in Schedule 5, and I can only recommend a course of action to remedy the grievance.

So what, one may ask, is the ultimate use of an Ombudsman who has such wide investigative powers but who can only recommend the remedy? The answer is simple. The Ombudsman is tasked with showing the way to fix the unfair or improper behaviour in public service delivery by the other arms of the state and their armies of foot soldiers. It is left to the wrongdoer to fix the problem. Should that fail, the Ombudsman can send the opinion and recommendations to the President and the National Assembly where the politicians can make the ultimate difference.

It is now an established tradition that the Ombudsman will listen to and assist most of those who knock on our door because that is how we start to improve service delivery across the public service. Whatever the grievance, the citizen's pain requires some kind of solace, if only to be shown that the practice had no malice and the 'offending' public officer had only good intentions.

It is precisely through this 'informal' extra-judicial approach that the Ombudsman's value is best displayed. Giving this Office its true worth is not only recognition of the constitutional value of the Ombudsman, but also the ultimate sign of respect for the Constitution which, through foresight and vision, provided a 'fourth arm' that could guarantee and maintain an effective public service within the State.

Nichole Tirant-Gherardi
Ombudsman
31st January 2020



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APPENDIX I

APPENDIX II



1 INTRODUCTION

The general Annual Report of the Office of the Ombudsman is submitted each year to the National Assembly and copied to the President in compliance with paragraph 6 (6) of Schedule 5 of the Constitution.

It is a general report of the exercise of the functions of the Ombudsman for the period under review. This report chronicles the activities of the Office in the year 2020.

Once laid before the National Assembly and submitted to the President the Report becomes a public document and will be shared with all public authorities and fellow Ombudsmen around the world readily available to anyone wishing to access a copy.

This year, the Report will only be published in an electronic format as part of the cost-cutting efforts of the Ombudsman in the COVID-19 pandemic.

Copies are available ONLY upon request by electronic mail to: info@ombudsman.sc

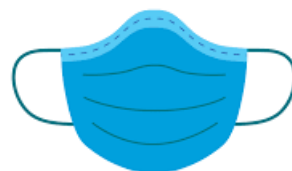
Attention is drawn to [Chapter 15](#) which contains a summary of general recommendations made throughout the body of this report and in previous instances where they may remain relevant to the new administration.



President Danny FAURE receives 2019 Report from the Ombudsman
(Photo credit State House)

2 THE COVID-19 EFFECT

- 2.1** 2020 will most certainly go down in History as a watershed year – one that drew a line in the sand between the height of globalisation and the interlinked economies of the global village, and the 'new normal' in which countries were forced to look deep within their own borders to guarantee continuity and sustainability. By April 2020 the COVID-19 global pandemic had shut down airports and seaports and grounded aircraft the world over which translated for Seychelles in an unprecedented drop in revenue as our tourism mainstay faltered and hotels mothballed in the face of no visitors arrivals. To face the inevitable and impending economic storm a major review was carried out of the 2020 budget and reallocation of funds to areas where the Executive felt they would be most needed.
- 2.2** The exercise led to a first time amendment to the Appropriation Act 1 of 2020, approved in December 2019 for the sum of SCR 9,230,765,399, by another Act, the [Appropriation \(Amendment\) Act 13 of 2020](#) for the greater sum of SCR 10,447,151,547. I considered this proposed amendment in the context of an own motion inquiry which led to an opinion submitted to both the President and the National Assembly ahead of the latter's debate on the Bill on 8th April 2020. However, although the President acknowledged receipt of the opinion while insisting that the times called for harsh measures, neither the Speaker nor any member of the National Assembly responded or took up the points raised in the debates. A synopsis of the opinion is set out in [Chapter 13.3](#).
- 2.2.1** The budget review exercise resulted in a 16% budget cut to the Office of the Ombudsman's operational budget for 2020 from SCR 3,768,000 to SCR 3,112,000. The budget and recruitment constraints had the effect of aggravating the challenges already earmarked for 2020.





3 THE OFFICE

- 3.1** The constitutional office of the Ombudsman since 1993 provides citizens and residents of Seychelles with a forum in which to address issues of maladministration, good governance, human rights violations and fraud and corruption within the public service.
- 3.2** Today, parts of its mandate have been transferred to other statutory institutions, such as the [Seychelles Human Rights Commission](#) and the [Anti-Corruption Commission](#), with much wider powers to deal with violations of the fundamental rights enshrined in Chapter III of the Constitution as well as the corruption agenda.
- 3.3** Notwithstanding, the constitutional mandate of the Ombudsman remains unchanged and still provides for specified intervention in instances of fraud and corruption and in human rights violations by public officers.
- 3.4** **Investigating Allegations of Fraud or Corruption – Schedule 5 paragraph 1(1)(b)** of the Constitution ([SEE APPENDIX I](#)) empowers the Ombudsman to “investigate an allegation of fraud or corruption in connection with the exercise by a person of a function of a public authority”. This is understood to mean that the Ombudsman can only initiate an investigation upon an allegation of fraud or corruption being made in a complaint. In the absence of such complaint therefore, no investigation can be launched. Furthermore, upon completion of any investigation for fraud or corruption, the Ombudsman is limited by virtue of Paragraph 6(1)(g) to forming an opinion that “the allegation of fraud or corruption is well founded.” This limited room for manoeuvring added to the highly specialised investigative capacity required to investigate fraud and corruption cases has served to place this particular function of the Ombudsman virtually outside my scope of action. I have not carried out any such enquiries and am not aware of any having been carried out by any of my predecessors.
- 3.5** **Investigating actions that result in human rights violations** – The Ombudsman is obliged, upon receiving a complaint alleging a violation of the complainant's fundamental rights or freedoms as guaranteed under the Charter, to investigate the action. **(Paragraph 1(2)(a))**. In relation to such an investigation where the Ombudsman forms an opinion that the action was wrong or unjustified, **paragraphs 1(1)(c) and (d)** enable the Ombudsman to

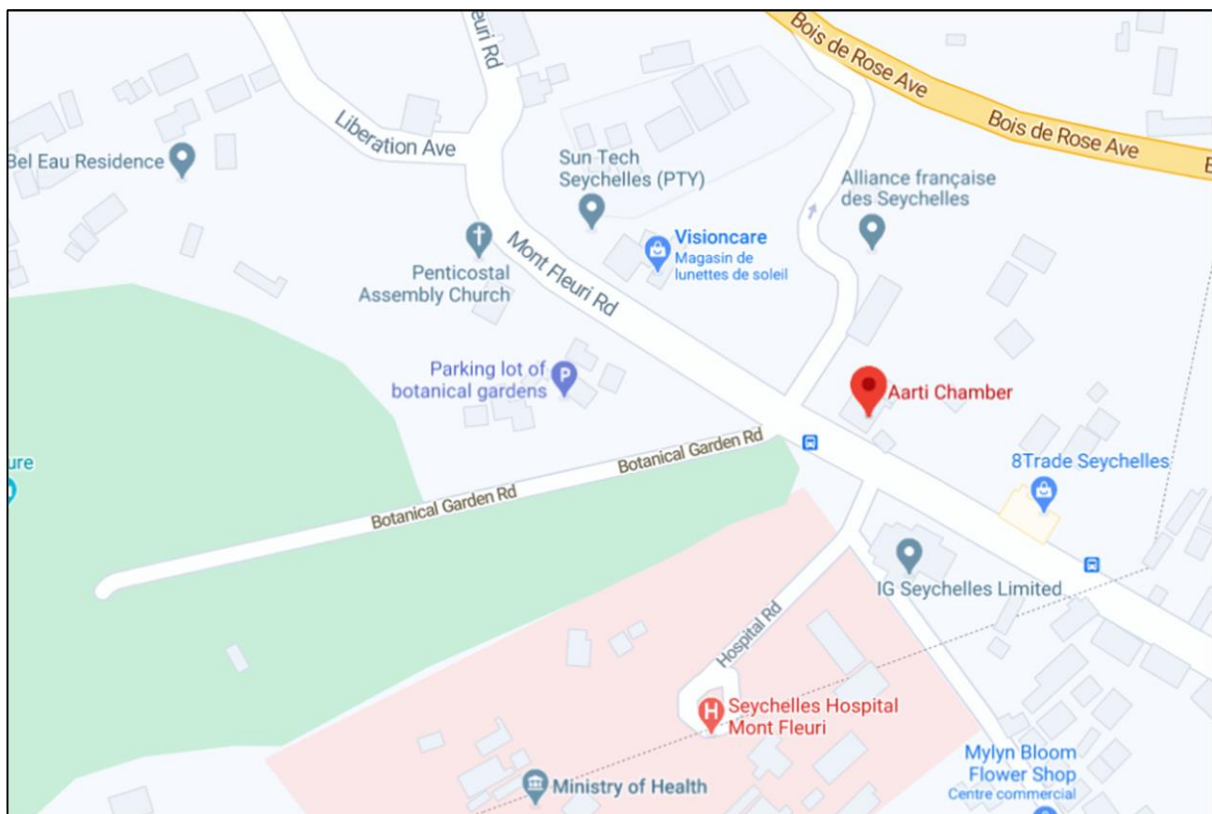


“assist an individual complainant in respect of legal proceedings in relation to a contravention of the provisions of the Charter,” and become a party to proceedings relating to a contravention of the provisions of the Charter with the leave of the trial court.

- 3.6** The Ombudsman has not availed itself of either of these constitutional powers in the period under review, primarily because of the lack of in house investigative and legal capacity as well as limited financial resources linked to the costs of legal representation for such actions.
- 3.7** **Cooperation with the new institutions** – The interface between the new institutions and the Ombudsman remains an area of potential conflict which should be addressed to ensure that it does not affect the work and end results of all the institutions involved. While I can report that no direct conflict has arisen between the Ombudsman and any of the new institutions to date, overlaps continue to be identified in several instances. Of particular note is the trend for complainants to lodge complaints or grievances with all the institutions at the same time based on the same subject matter.
- 3.8** To address this challenge, the institutions should all subscribe to Memoranda of Understanding to frame our close working relationships. **This process began in 2020 with draft memoranda under consideration between the Ombudsman and the Truth and Reconciliation and National Unity Commission and the Anti-Corruption Commission. It is expected that this process will be formalised in 2021.**
- 3.9** Meanwhile, I have continued to consider each complaint submitted to my Office on its merits and where, as is often the case, elements of maladministration are noted in addition to the elements of fraud and corruption or a human rights violation, my Office has proceeded with its enquiry into the perceived maladministration and referred the other aspects to the relevant institution.

4 OFFICE ACCOMMODATION

- 4.1** The Ombudsman operates from physical premises in Suites 206 and 306, Aarti Chambers at Mont Fleuri. The Office is well-placed on the Mont Fleuri road, opposite Seychelles Hospital, the Botanical Gardens and key ministries of the Family, Education, Foreign Affairs and Tourism and is well served by public transport, making it readily accessible to citizens. Suite 206 provides street level access for any physically challenged complainants attending our Offices.
- 4.2** Furthermore, we have sufficient office space to accommodate projected additional staff needs while remaining well within our annual budget allocation for rental.



Office of the Ombudsman - Suite 306, Aarti Chambers , Mont Fleuri , Mahe - Seychelles
Tel: +248 4225147 Email: info@seychelles.net



5 STAFFING

5.1 At the end of 2020, the Office of the Ombudsman comprised a complement of six persons, including the Ombudsman. The Office includes an 'investigations section' headed by a Senior Investigations Officer and two investigation officers, one of who is a law graduate (Legal/Investigations Officer), as well as an 'administration section' dealing with the administrative, financial, and human resources matters, comprising an Office Administrator and assistant.

5.2 Staffing for the period January to December 2020 was as follows:

Principal Investigations Officer	-	vacant
Senior Investigations Officer	-	Sylvette Gertrude
Legal/Investigations Officer	-	Sophie Lagrenade
Investigations Officer	-	Tressy Dine
Investigations Officer		vacant
Office Manager/Administrator	-	Marie-Paule Gertrude
Accounts Assistant	-	Wendy Michel

5.3 **Information Officer** – In accordance with its legal obligation under the **Access to Information Act**, the Office has nominated Sylvette Gertrude Information Officer under the Act.

5.4 **Vacancies** – Several positions remained vacant throughout the year. Efforts to recruit a principal investigations officer at the start of 2020 proved unsuccessful as no suitable candidate applied. The post remained vacant as at the year's end.

5.5 **Investigative Capacity** – The Office's investigative capacity was able to deliver reasonably well with a Senior Investigations Officer and two Investigations Officers in the team.

5.6 **Staff Training** – Each year the Office seizes every opportunity for short training sessions and workshops either locally or offered through our membership of international ombudsman associations. In 2020, all the overseas sessions were cancelled and replaced by short on line discussions. ([See Chapter 9.3](#))

Staff members did attend some local training sessions organised by the Guy Morel Institute. These included workshops on interactive video conferencing

to meet the demands of the current arrangements of videoconferencing; workshops on Transparency and Accountability for Good Governance; and Basic Finance & Budgeting for staff in our administrative section.

A team building session organised by the Office in October 2020 brought the entire team together to improve communications and motivation.

5.7 Dedicated medium term training – Law-related research remains an essential part of the work undertaken by the Office and this is well addressed by the Law graduate, Sophie Lagrenade as a legal/investigation officer. I would like to find specialised medium-term training for Ms Lagrenade in 2021 to improve her skills and performance in this domain.



The Office of the Ombudsman out for the Christmas lunch



6 BUDGET

6.1 The original Appropriation Act 1 of 2020 was amended in April by the Appropriation (Amendment) Act 13 of 2020 in which the budget originally approved for the Office of the Ombudsman for **2020** was reduced by 16% to meet the demands of the financial crisis caused by the COVID-19 pandemic.

6.2 The original budget allocation for **2020** was as follows:

Compensation of Employees	SCR 2,025,000
Use of Goods & Services	SCR 1,743,000
Total	SRC 3,768,000

6.3 Following the amendment, the final budget allocation approved for disbursement by the Ministry of Finance for **2020** was as follows:

Compensation of Employees	SCR 1,827,000
Use of Goods & Services	SCR 1,284,000
Total	SRC 3,112,000

6.4 The Office of the Ombudsman currently operates under a full PPBB which effectively means that the Office is expected to show performance-based results of all its activities. In view of the services rendered by this constitutional body, it is difficult to set tangible measurable targets and indicators of performance. To support this view, I point to the Ombudsman's vision for a *fair, open, accountable and effective public service* which should technically lead to fewer and ultimately no complaints of maladministration in years to come. Meanwhile, the Office is expected to carry out budgetary performance audits each year – a task that is both daunting and time consuming with our limited human resources.



7 ACTIVITIES OF THE OFFICE

7.1 CASE WORK

7.1.1 Investigating Complaints – The work of the Ombudsman is dedicated primarily to enquiries into complaints of grievances lodged by members of the public in respect of maladministration, unfair decisions, discriminatory practices, etc. In 2020, the office registered a total of 166 complaints. As in previous years, more than half the complaints received were either premature (71), where the complainant had not exhausted available avenues for seeking remedy, or 'outside remit' (65) where the matter falls within one of the exclusions contained in Paragraph 2 of Schedule 5 or because it involves actions between private persons or bodies.

7.1.2 Referrals – Under the Ombudsman's standard operating practice, where the complaint is 'premature', we advise the complainant of the options available to them and prepare, where necessary, referral letters to ease access to those services.

7.1.3 Status of retained Complaints – All 27 complaints retained by the Office in 2020 remain pending as at the date of this report. Out of the 3 cases retained for mediation by the Ombudsman, two have been completed and one remains pending.

7.1.4 Systemic Issues – Again, in 2020, systemic issues were noted in the issue of Gainful Occupation Permits, Prohibited Immigrant Notices and the general administration and oversight of the Employment Act by the relevant public authorities in an overview of numerous individual complaints. In addressing systemic administrative weaknesses across the public sector, the Ombudsman can have the most positive impact by focusing on the primary cause of the systemic dysfunction rather than on individual cases. However, these systemic issues require deeper investigation – a process which is continuing into 2021. To improve the efficiency and efficacy of investigations in this domain, the Office needs to increase its investigative capacity and provide more specialised training to staff.

7.2 ADVICE & ASSISTANCE

7.2.1 Ombudsman sometimes considered a 'legal aid' office – The Ombudsman's services are free. Presumably because all Ombudsman since the post's inception in 1993 have been former or practicing attorneys-at-law, a popular



but mistaken belief is that the Office offers free legal advice. Throughout 2020 the Office continued to receive requests for legal advice. It is now standard practice to not entertain these requests but advise the complainants to contact lawyers of their choice. We do not recommend any particular attorney or chambers in the spirit of objectivity and transparency.

7.2.2 Ombudsman takes complaints as last resort – Paragraph 1(3)(d) of Schedule 5 of the Constitution requires that before investigating a complaint involving an action taken by a public authority or officer in the course of his administrative capacity, the Ombudsman must be satisfied that the complainant does not have other remedies available to him under the Constitution or under any other law. In line with this constitutional requirement, our internal assessment process considers whether complainants have cleared this hurdle and sought redress for the substance of their complaints. This procedure now includes referral letters which the complainant will present to the relevant complaints office in the public service institution where he will follow a specified avenue for redress. It is only where this fails that the Ombudsman will take up the complaint.

7.2.3 Making referrals work – However, for this referral process to work well, it also requires direct cooperation of all public offices and state-owned enterprises since they must have their own internal complaints' handling systems and procedures to deal with complaints from members of the public who use their services. These procedures must be known to the public and to our Office. This remains an area for improvement and greater attention throughout the public service since not all ministries and departments have complaints' handling mechanisms in place and even those that claim to have them do not always appear to make full and proper use of them. Hence our general recommendation that all public authorities set up internal complaints handling mechanisms and structures to address inhouse complaints.

7.3 MEDIATION

7.3.1 No direct mandate to mediate – Whilst the mandate of the Ombudsman as contained in Schedule 5 does not specifically provide for mediation, the modern trend across many jurisdictions shows a departure from the traditional role of investigating complaints, drawing conclusions and making recommendations towards other forms of alternative dispute resolution between the parties. In fact, in French-speaking jurisdictions the Ombudsman is known as a *Mediateur* and has a traditional task of mediation.



- 7.3.2 Ombudsman should be given statutory role of Mediator** – Giving the Ombudsman an unambiguous mediator role may be the only practical way to resolve grievances in some instances. Hence, it is proposed that the Executive and the Legislature consider revising the existing legal framework governing the Ombudsman's mandate to provide directly for mediation in addition to the traditional investigative and quasi-judicial tasks of the Office.
- 7.3.3 Dedicated Ombudsman Act** – Such legislation is envisaged in **Article 143 (6)** of the Constitution which makes provision for "an Act" that "may provide for any matter, not otherwise provided for under this Article, necessary or expedient for the purpose of ensuring the independence, impartiality and effectiveness of the office of the Ombudsman." A dedicated stand-alone Ombudsman legislation could set out the mediation dimension of the mandate, amongst other things. The Ombudsman will submit proposals for such legislation in the course of 2021.

Defining an Ombudsman

The best definition of "Ombudsman" to date was provided in 1974 by the International Bar Association

"An office provided by the constitution or by action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employers or who acts on his own motion, and has power to investigate, recommend corrective actions and issue reports."



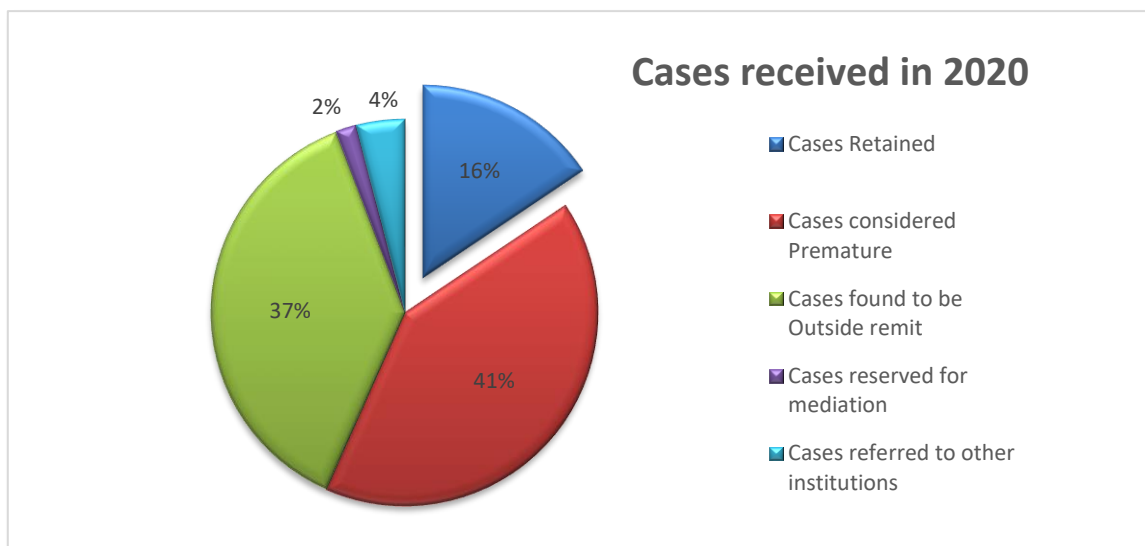
8 STATISTICS

8.1 The statistics for complaints registered in the Office of the Ombudsman in 2020 are set out hereunder. They are organised according to month and subject matter respectively.

8.2 **Case Management System** – I recognise that collection and treatment of statistics by the Office needs improvement. The absence of a case management system remains a major challenge for the Office. Such a system could simplify the task of managing the overruns year on year and guarantee more reliable statistics. The Office continues to explore the possibility of obtaining assistance through its membership of international ombudsman organisations to set up a system which comes at a high cost and train staff to manage cases.

COMPLAINTS RECEIVED BY OMBUDSMAN IN 2020	
Complaints received by the Ombudsman	166
Cases Retained	27
Cases considered <i>Premature</i>	71
Cases found to be <i>Outside remit</i>	65
Cases reserved for mediation	3
Cases referred to other institutions	7

Figure 1: Cases received in 2020





COMPLAINTS RECEIVED IN 2020 (BY MONTH & SEX)

MONTH	TOTAL NUMBER OF CASES	SEX	
		F	M
January	18	8	10
February	18	5	13
March	8	4	4
April	1	-	1
May	12	5	7
June	16	5	11
July	12	5	7
August	19	7	12
September	22	8	14
October	10	3	7
November	23	12	11
December	7	2	5
GRAND TOTAL	166	64	102

Figure 2 : Cases by month in 2020

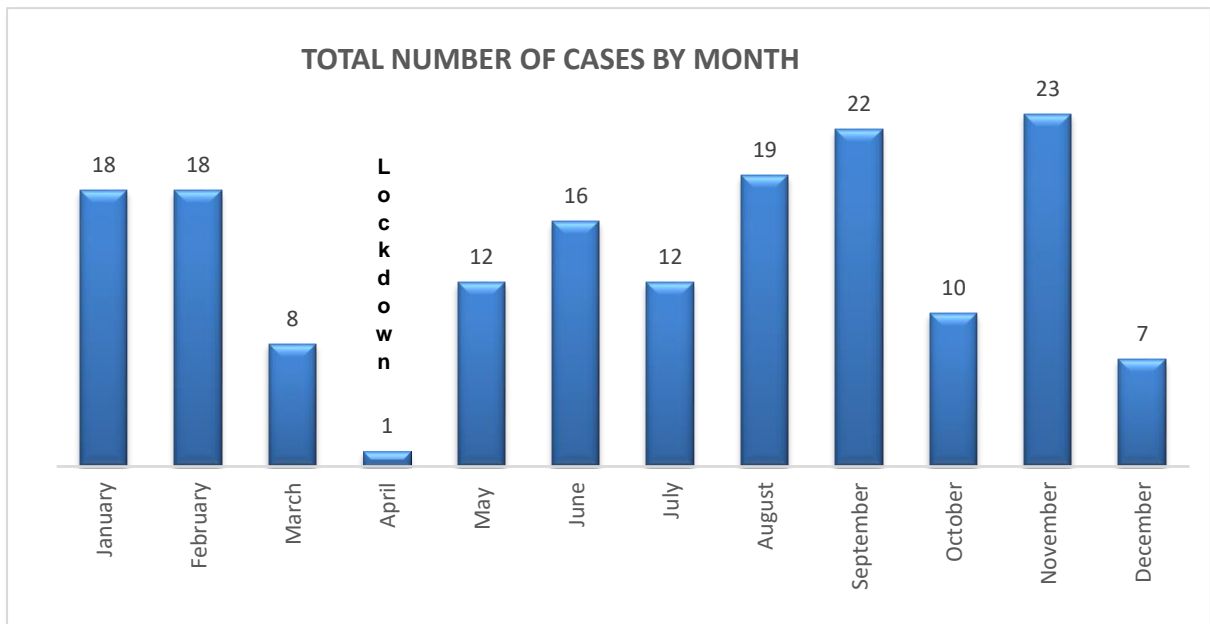
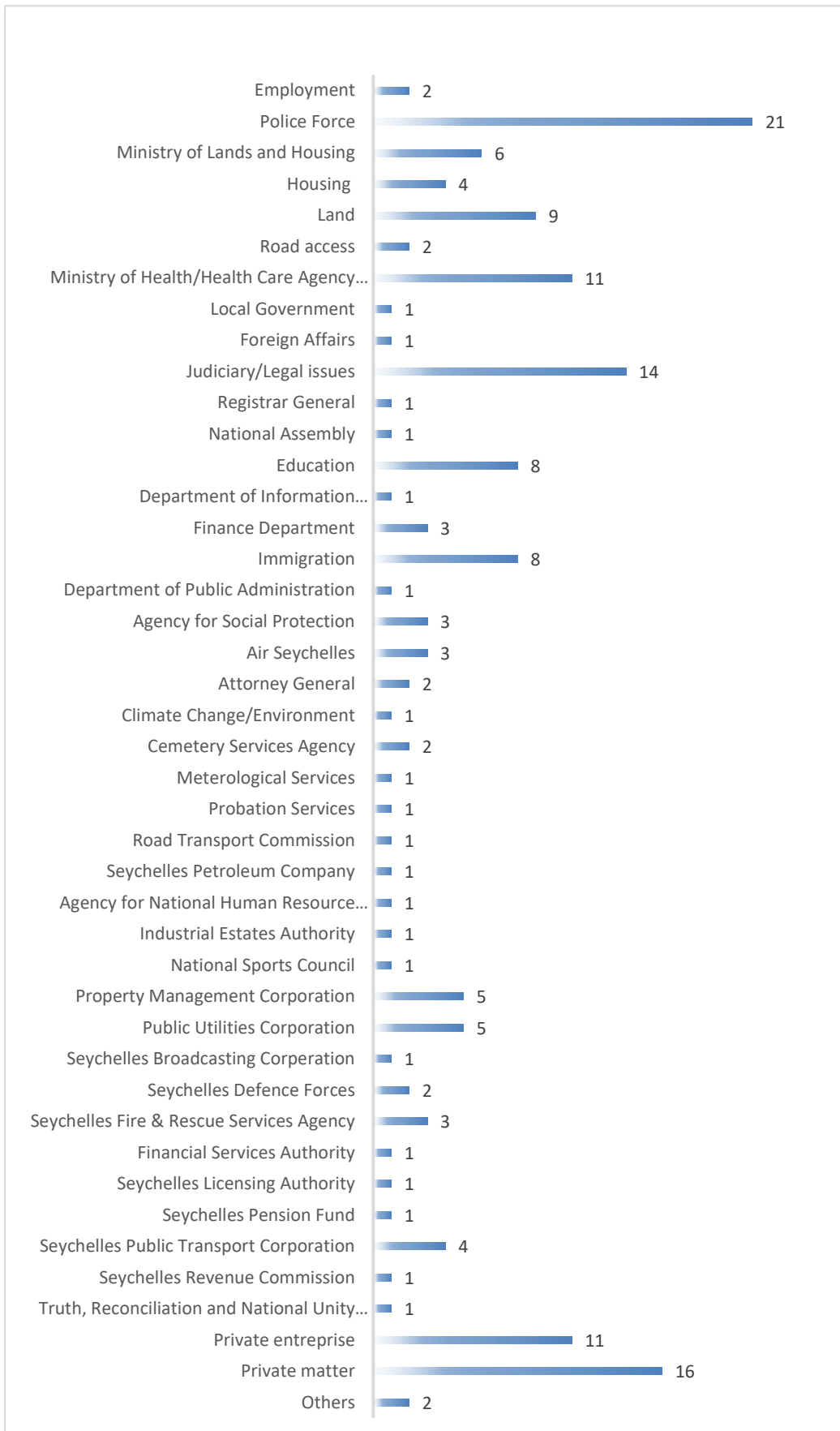




Figure 3 : Snapshot of complaints received in 2020





SAMPLE OF REPORTED COMPLAINTS – PREMATURE & OUTSIDE REMIT

NATURE OF COMPLAINTS	RESPONDENTS
<p>A retired army officer alleged unreasonable delays in receiving his pension from the Seychelles Pension Fund. He claimed that he had been informed at the time of his retirement that he would receive his pension four months later but had not yet received anything by the time he complained to the Ombudsman. He had verbally addressed the issue with the Pension Fund and was told his pension was still being processed.</p> <p>The complainant was advised to address a formal written complaint to Pension Fund setting out his grievance in respect of their delay before any further action could be taken by the Ombudsman.</p>	<p>Seychelles Pension Fund</p> <p>Outcome – Premature</p>
<p>A complainant lodged a grievance against the Seychelles Police Force for failing to follow police procedures in respect of presenting a search warrant to the homeowner before conducting a search. The Complainant claimed to have contacted the Police Internal Affairs, which is believed to be the section that deals with complaints against police officers in the conduct of their duties, but alleged that the Police had not taken a formal statement in respect of the complaint.</p> <p>The complainant was advised to submit a formal complaint in writing addressed to the Seychelles Police Force setting out the grievance. The Ombudsman could not investigate this action until the police had been formally seized of the complaint and had been given the opportunity to deal with it.</p>	<p>Seychelles Police Force</p> <p>Outcome – Premature</p>



<p>The complainant alleged he was owed money by two private individuals and wanted the Ombudsman to order the individuals to pay him back.</p> <p>The complainant was advised to seek legal advice on the matter.</p>	<p>Private matter of debt between two private individuals</p> <p>Outside Remit</p>
<p>A complainant alleged that he was wrongly diagnosed by a medical doctor employed by the Ministry of Health/Health Care Agency and claimed that he was administered wrong and harmful medications. The complainant had not lodged his grievance with either the Ministry/Health Care Agency as employers of the doctor, nor had he filed a formal grievance with the Seychelles Medical & Dental Council which is directly empowered to deal with the complaint.</p> <p>The Ombudsman Office advised the complainant accordingly.</p>	<p>Ministry of Health</p> <p>Outcome – Premature</p>
<p>A former Police Officer who had resigned from the Force wanted the Ombudsman to enforce an Order made by the Public Service Appeal Board (PSAB) ordering that he be paid a <i>pro-rata</i> gratuity and that the resignation letter be withdrawn and replaced with a termination letter by a specified date. Over a month after that date, at the time the complaint was lodged with the Ombudsman, the Police Force had not enforced the PSAB Order.</p> <p>The complainant was advised to inform the PSAB of the non-compliance with their Order so that the PSAB would follow up and address the issue of non-compliance with its order by the Force.</p>	<p>Seychelles Police Force</p> <p>Matter outside remit</p>



<p>The complainant expressed dissatisfaction with the Supreme Court Order regarding co-ownership of land and buying out a sibling's share in the family home.</p> <p>The complaint amounted to an appeal against an Order of the Supreme Court. It fell outside the mandate of the Ombudsman. The complainant was advised to seek legal counsel on a possible appeal of the court's decision.</p>	<p>Judiciary</p> <p>Matter outside remit</p>
<p>A crèche teacher employed by the Ministry of Education was suspended from duty without pay, pending an investigation. She complained that it had been a month since her suspension and she had not been informed of the outcome of the investigation.</p> <p>As she had not asked the Ministry for the outcome, she was advised to do so in writing.</p>	<p>Ministry of Education</p> <p>Premature</p>
<p>A student had been recalled from overseas studies because of the Covid-19 pandemic and had not completed the training. The complaint was that the Agency for National Human Resource Development (ANHRD) had breached the contract by not paying the student a stipend for two months. The complainant claimed to be entitled to the stipend until the completion of the studies under the contract.</p> <p>The complainant had not formally complained to the ANHRD and was advised to do so in writing before any action could be considered by the Ombudsman.</p>	<p>Agency for National Human Resource Development</p> <p>Premature</p>



9 INTERNATIONAL EVENTS IMPACTED BY COVID-19 PANDEMIC

The pandemic was officially declared on 12th March 2020 and was followed by worldwide travel bans, with the immediate cancellation of international events organised for the first semester of 2020. Consequently, training sessions by our strategic partners, the *Association des Ombudsmen et Médiateurs de la Francophonie* (AOMF) the African Ombudsman and Mediators Association (AOMA) ([See Chapter 14 – Strategic Partners and Membership](#)), scheduled in the first semester, were cancelled as were the first executive committee meeting of AOMA scheduled for Madagascar and the executive committee meeting and training session planned by the AOMF in Brussels in April. Both organisations reviewed their events calendar opting for a changed format of webinars and online discussions. These were as follows:

- 9.1 **AOMA EXECUTIVE COMMITTEE MEETING** – AOMA executive committee meeting was rescheduled online on 3rd August 2020 when, *inter alia*, my request for a reduction of fees was considered and accepted. The outcome was that the Seychelles Ombudsman received a special dispensation to pay annual membership fees of only US\$ 500 instead of US\$ 1,000.
- 9.2 **AOMF EXECUTIVE COMMITTEE MEETINGS** – As the elected representative for the Indian Ocean islands sub-group on the executive committee of the AOMF ([Association des Ombudsmen et Médiateurs de la Francophonie](#)), I attended two virtual executive committee meeting of the AOMF on 22nd June 2020 and 1st October 2020. At the first meeting my request for a reduction in our 2020 annual membership fees was considered and it was agreed to halve the fee for Euros 500 instead of Euros 1,000.
- 9.3 **WEBINAR DISCUSSIONS ORGANISED BY [African Ombudsman Research Centre \(AORC\)](#)**
 - 9.3.1 **Discussion on ‘Dealing with the Media’** – The AORC, the resource and training arm of AOMA, organized webinar discussions on selected subjects during the course of the year. These included a discussion on ‘Dealing with the Media’ on 26th November 2020 which looked at the manner in which Ombudsmen are called upon to share their investigation outcomes with the public through the media in an effort to be transparent and accountable and also in guaranteeing that government departments and authorities remain accountable to the citizens. The session shared best practices and tools for efficient press releases press conferences and interviews with the media.

- 9.3.2 Discussion on ‘Ombudsman Under Threat’** – This session was held on 27th October 2020 to commemorate South Africa's Ombudsman Day on 10th October as the country celebrate the 25th anniversary of the Office of the Public Protector. The discussion looked at the existing threats and challenges faced by the Ombudsman institutions in African countries and how to overcome these in line with the strategy elaborated by the International Ombudsman Institute. The discussion provided the key to enhancing the capacity of the African Ombudsman and contributing to the development of skilled resources within each institution.
- 9.3.3 Discussion on ‘Celebrating Women Ombudsman’** – I was a speaker in this session held on 28th August 2020 as part of the celebration of women's month in South Africa. Discussion centered on the challenges faced by women Ombudsman in patriarchal African societies and how women have overcome these challenges, highlighting their strengths and unique approach in finding solutions to problems. In my presentation I dismissed sexism in my role as a woman Ombudsman focusing instead on the more general constraints of lack of suitably qualified legal expertise as the main challenge to my work.
- 9.3.4 AORC ‘Webinar on Report Writing Skills’** – Having identified report writing skills as a training priority for its members in its ongoing needs assessment, the AORC organised this webinar for African Ombudsman and their staff on 14th August 2020 to focus participants on practical measures that Ombudsman and their staff can use to improve their report writing skills. The webinar was attended by all members of my Office.



The Ombudsman's team attending webinars in the Covid-19 New Normal



10 CHALLENGES

10.1 VISIONING EXERCISE & STRATEGIC STATEMENT –

10.1.1 The Ombudsman's strategic plan ([APPENDIX II](#)) for the period of my mandate (March 2017 to March 2024) envisions '**A fair, open, accountable and effective public service**'. Our core mission is to continuously improve the level of service delivery across the public service.

10.1.2 The plan was drawn up in 2017 during the first year of my mandate. It focused on institutional and capacity building over the first period from 2018 – 2021 and envisaged consolidation and possible readjustment in the second period from 2022 to the end of my mandate in 2024 in preparation for the next Ombudsman.

10.1.3 However, although we have made significant progress in training existing staff to improve our service delivery, by the end of 2020 it was clear that the institutional capacity of the Office is not fully attained as we continue to fall behind in our ability to deliver on completed investigation reports. The need to recruit fully qualified personnel for a stronger legal team will be given greater attention in the coming year.

10.2 **CREATING A NEW POSITION FOR A QUALIFIED LEGAL OFFICER** – Since my mandate began in 2017 it has become increasingly evident that the complexity of complaints and the investigation and evaluation processes adopted by the Office result in increasingly detailed reports of findings and recommendations that require a high level of legal competence on a permanent basis. This weakness is exacerbated by the lack of a deputy position for this *one-man* institution. The Office intends to address this challenge by proposing the creation of a new senior legal officer's position to assist in this task. To this end, the Office is retaining available funds already earmarked for other vacant posts while we continue to revise our institutional needs and identify a suitable candidate for the post.

10.3 **OUTREACH PROGRAMME** – The Strategic plan includes an outreach programme aimed at bringing the services of the Ombudsman closer to the population, especially the other main population centres of Praslin and La Digue where the Office does not have any branch or sub-office. The programme involves facilitating access to Ombudsman services through open 'clinics' for residents of those islands. The COVID-19 pandemic



restrictions as well as the budget cuts made it difficult to organise day trips to Praslin or La Digue in 2020. We countered this weakness by accommodating all complainant residents of both islands with short notice meetings.

10.4 WEBSITE – Part of reaching out to the public and providing real time information is served by a good website. In March 2020, the Office applied to the AOMF for part-financing of a project to create a dedicated website to give maximum online visibility to the Office. The application was approved in the sum of **Euros 1,482**. However, due to several setbacks caused by COVID-19, including budget constraints of the Ombudsman's operational budget, the project has been delayed into 2021. The Office has a Facebook page which it uses for information purposes.

10.5 ADDRESSING INCREASED BUDGET MANAGEMENT OBLIGATIONS –

10.5.1 The Office is now operating under a full PPBB (Programme Performance-Based Budgeting) which requires continuous overview and oversight of performance information designed to show how effectively the Office is using its budget allocation for its single programme, which is to carry out its constitutional mandate of investigating complaints, promoting good governance, improving administration and promoting and protecting human rights.

10.5.2 This has resulted in a greater demand for time and expertise in the annual budget preparation and reporting generated by this approach. To meet this demand, the Office set up a dedicated administration section run by an Office Manager and an assistant. However, it has proven challenging to rationalise new posts while maximising the work performed by the two staff members involved. The Office's lack of administrative autonomy continues to hinder the completion of this exercise since the Department of Public Administration plays a direct role in the human resource management of the Office.

10.5.3 It remains to the honour of the current team of Ombudsman's staff that the work is done under the best possible circumstances despite the fact that one staff member has not been able to fully benefit from the promotion proposal envisaged in this exercise.

10.6 LOBBYING FOR FINANCIAL & ADMINISTRATIVE AUTONOMY –

The Ombudsman and other constitutional and autonomous statutory bodies in 2019 lobbied the Ministry for Finance for greater financial and administrative



autonomy in the face of proposed legislation designed to 'improve' oversight of the financial management of constitutional bodies. The legislation was subsequently shelved, but the more central issue of greater financial and administrative autonomy remains outstanding. No steps were taken in 2020 to revive the debate, primarily because of the disruption caused by the COVID-19 pandemic and general elections announced for October. It is my intention into 2021, to continue to lobby for the most suitable and cost effective solution for my Office to deliver our services efficiently and effectively while maintaining our financial and administrative autonomy and independence as guaranteed by **Article 143 (3)** of the Constitution.

10.7 EDUCATING THE PUBLIC ON THE ROLE OF THE OMBUDSMAN –

Statistics for 2020 continue to show that the public remains largely ignorant or unclear of the role and mandate of the Ombudsman. Out of a total of 166 complaints lodged in 2020, a total of 136 were either 'premature' (71) or 'outside remit' (65) of the Office.

10.7.1 Public awareness programme – To address this weakness, the Office must focus on developing a specialised education and awareness programme to fully sensitise and educate the general public on the Ombudsman's mandate and work its programme. However, in the absence of dedicated staff and budget, this will remain a major challenge.

10.7.2 Messages & Social Media – Meanwhile, to give greater visibility to the Office, we issue messages on the occasion of national and international days related to our areas of interest. This process has benefitted from the complicity and cooperation of the national media at no cost to the Office. I thank all the media houses for their contribution to our cause. The Ombudsman's Facebook page is also used to post information on the Office.

10.7.3 Information leaflets – We have designed and printed an information leaflet outlining the work of the Ombudsman which is readily available to the public. Our plans to include the design and publication of pamphlets and posters for distribution to schools and other public places and offices did not materialise because of the budget cuts.



11 PROMOTING GOOD GOVERNANCE & ACCOUNTABILITY IN THE PUBLIC SERVICE

- 11.1 ESTABLISHING RULES & PROCEDURES IN PUBLIC SERVICE DELIVERY** – The Public Service comprises that ‘army’ of civil servants or public officers charged with regulating the economy, providing education, health and welfare services, collecting revenue through taxation, protecting individuals and safeguarding law and order or defending the country, etc. Public officers and authorities deliver these services through their decisions and determinations made in a fair and non-oppressive manner for the benefit of members of the public based on a set of rules that are known to both service provider and service user. Following those rules and criteria with diligence guarantees the transparency of the process and enables the public officer to always remain accountable for his decisions and determinations. It is the open, predictable and transparent nature of the process that determines what is termed ‘good governance.’
- 11.2 DEFINING GOOD GOVERNANCE** – Good governance is the central tenet of the work of the Ombudsman who may be likened to the ultimate ‘*quality controller*’ of the State, ensuring the fair, un-oppressive and transparent nature of the process and holding public officers accountable for any deviations or failings in implementing government policies and laws through the basic functions of Government. Good governance is guaranteed only if all parties continuously draw and learn from their errors; only if the public officer is made ‘accountable’ at whatever degree for any failure. This remains fundamental to the Ombudsman’s work. Without addressing where the decision went wrong, improving on the quality will not be achieved.
- 11.3 REJECTING THE OMBUDSMAN’S WORK IS MISSING THE POINT** – In 2020, there have been instances where public authorities have missed the point completely and have rejected my recommendations or have counter-recommended my findings. My work is designed to draw attention to the errors and to advocate the change that will improve the public service. This should remain the focus of the public service in receiving my investigation reports. In order to address this and ensure that the work of the Ombudsman is given its full worth and effectiveness as that special arm of the State envisaged in the Constitution, I am working on general proposals for



submission to both the Legislature and the Executive on a dedicated Ombudsman's Act designed to address this situation going forward.

11.4 PUBLIC AUTHORITIES MUST PROVIDE FOR COMPLAINTS' HANDLING – The fundamental purpose of the public service is to serve the public. As servants of the public, a good public sector service must be economical, efficient, effective, fair, impartial, prudent, responsive and transparent in all dealings with citizens. Citizens and the public in general have a right to expect a quality service at all times.

11.4.1 Setting up internal complaints' mechanisms – Capturing and addressing the grievances of members of the public at source will help channel the complaint and address it more directly both for the complainant and as part of the quality control exercise of the public authority. Setting up such complaints offices is therefore key to any long-term initiative to improve service and maintain a high standard of service delivery.

I have made general recommendations in previous Annual Reports to set up complaints' handling systems to deal with internal matters. However, many public authorities still do not or cannot deal effectively with in-house complaints by the public either because they have no complaints-receiving structure or the process is unknown to and not followed or only partially followed by both sides.

In order to assist the new administration as it seeks to improve public service delivery, I again recommend that all public authorities (ministries, departments, agencies and state-owned enterprises) should set up effective internal customer complaints handling mechanisms where these do not already exist. Many public authorities already have websites and a social media presence which they could use as a more cost effective means to inform and engage the public on how to resolve issues and complaints about their services.

11.4.2 Using the outcome of the complaints review to improve services – Public authorities should use complaints from those who use their services to determine what, if anything, may have gone wrong in their service delivery and consider how to address it to not only satisfy the complainant but also to ensure it does not happen again. This process allows public officers to learn from their mistakes and make a lasting difference in efforts to create that effective, fair, impartial, prudent, responsive and transparent public sector to



which we aspire. It lies at the heart of the Ombudsman's constitutional obligation in the Third Republic.

11.4.3 Rationalise national complaints mechanisms – Again for the benefit of the new administration as consideration is given to law reform and legislative amendments in the coming months, I reiterate my previous recommendation for an urgent review, rationalisation and streamlining of the various national complaints mechanisms. It is a fact that in employment-related matters involving public officers, a public officer may appear to have recourse to several complaints mechanisms and appeals procedures. In the course of my enquiries, I have noted confusion in many instances as to the choice of institution complainants should turn. Provisions of the Employment Act, the Public Service Orders, the Public Service Appeals Board and the Employment Tribunal are sometimes confusing to the aggrieved person. This confusion has been exacerbated by recent changes in administrative practices which give greater administrative autonomy to parastatal organisations.

11.4.4 Reviewing the definition of public officer – In this same context, I have noted that the definition of 'public officer' may not always be clear or generally agreed and accepted, especially with respect to employment in state-owned enterprises. For the purposes of the Ombudsman's mandate to investigate, a "public authority" is defined in the widest possible terms as "a Ministry, a department, division or agency of the Government or a statutory corporation or a limited liability company which is directly or ultimately under the control of Government or any other body which is carrying out a governmental function or service or a person or body specified by an Act." **(Paragraph 1(3) of Schedule 5). It is recommended therefore that a clear policy and practice direction be drawn up by the Executive to lift any confusion and/or lack of clarity on this matter.**

11.4.5 Combining & rationalising work of Public Relations & information Officers to handle complaints – I have previously recommended that institutions employing Public Relations Officers should make use of these officers to assist in their in house complaints handling systems. Furthermore, all public authorities are now obliged under the [Access to Information Act \(Act 4 of 2018\)](#) to appoint information officers. With a view to ensuring economies of scale and greater effectiveness across the entire public service, I reiterate my previous recommendation that the Executive, in consultation with the Information Commission, consider how internal complaints' handling



mechanisms could be amalgamated with Information Officers and public relations officers. This exercise may be even more urgent under the current exercise to rationalise expenditure and duties.



“It is thus incumbent upon you to expose every wrong you find committed in the public administration, without fear or favour. This means that the role of ombudsman is sometimes a lonely one, often the only voice of the public in the face of opposition from powerful officials.”

Nelson Mandela



12 ENQUIRIES & DEALINGS WITH PUBLIC AUTHORITIES & PARASTATALS

This chapter is dedicated to some of the more notable general matters emerging from enquiries and consultations with a selection of public authorities.

- 12.1 MINISTRY OF HEALTH & HEALTH-RELATED AGENCIES STILL NOT ENGAGING –** A total of 11 complaints against the ministry and health services agencies were received in 2020. These again included allegations of medical malpractice, requests for refund of treatment costs, and employment issues. Again the multiplicity of dedicated health-care-related institutions – Health Care Agency, the Public Health Authority, the Medical and Dental Council and the Ministry of Health – sometimes with converging or similar administrative roles and management, continue to pose a major challenge to determining the correct communication channel for the Ombudsman's enquiries.

Whether because of this or for other unidentified reasons, communications with the health authorities remain largely unacknowledged and unaddressed. Efforts to find a workable solution have so far failed to produce positive results.

The Ombudsman's duty to investigate complaints in an objective, impartial and fair manner is severely compromised where the respondent institution is not seen to have engaged in the opportunity to explain its action. In such instances, recommendations made by my Office may be seen to be one-sided and therefore fail the litmus test of fairness. Unless this matter is resolved, both the Ombudsman and the health services will continue to fail in their respective duties of guaranteeing a fair, transparent and effective service and further frustrate the complainants. It is imperative that the matter is addressed in 2021. I recommend that the Ministry of Health nominate a single officer to deal with all enquiries from the Ombudsman and any other investigative institutions.

- 12.2 MINISTRY OF HABITAT, LAND, INFRASTRUCTURE & LAND TRANSPORT –** A total of 21 complaints involving land use, road access, housing or planning issues were received in 2020. In depth enquiries are still ongoing into some of these complaints. In others, I have made important recommendations aimed at ensuring a fair and transparent decision-making process. Some of these have



been contested after the Ministry sought legal advice, thus putting into question the very essence of the Ombudsman's role in alternative dispute resolution. This position will need to be reviewed in the future since it renders futile the exercise on finding and addressing maladministration.

12.3 MINISTRY OF EMPLOYMENT – Four (4) complaints lodged against the Ministry of Employment allege failure in their statutory duty under the Employment Act of protecting employees and taking action against recalcitrant employers. While enquiries into these complaints are often borderline and still ongoing, I have noted a lack of coherence in the manner in which employee complaints are received by the Employment Department and followed through the tribunal.

12.4 THE NATIONAL ASSEMBLY – Following the publication of the report of my findings and recommendations in respect of complaints against the National Assembly's Anti-Victimization Committee, none of the remedial action proposed had been taken by the date of the present report. I will continue to push for respect of this Office's recommendations into 2021. The general lesson drawn from that case (reported in my 2019 report) is that all public institutions, especially those with judicial or quasi-judicial roles, must always scrupulously follow their terms of reference and rules and regulations and should not attempt on any grounds to circumvent these since doing so can be costly to both the public service provider and the general service-using public. I also wish to place on record that all my efforts to engage with the 6th National Assembly following that report remained frustrated. I remain hopeful that this will be remedied with the 7th National Assembly.

12.5 THE JUDICIARY – The Office recorded a total of 15 complaints against the Judiciary and legal officers the large majority of which were outside remit. Many of the complaints involved dissatisfied or disgruntled clients seeking redress against their lawyers or a second opinion on advice already given to them. These were clearly outside remit and treated accordingly. All complaints involving the judiciary are considered in accordance with **Paragraph 2(b) of Schedule 5** which prevents me from investigating an action *“concerning the performance of a judicial function or a Justice of Appeal, Judge or person performing a judicial function.”* In my standard operating procedures, I distinguish between the Judiciary's judicial function, which involves any legal finding, court order, ruling or judgment over which I have



no powers of oversight, and the administrative actions of the judiciary, over which I assume oversight. This interpretation may well be tested shortly in a complaint that the judiciary had failed to follow the statutory complaints handling procedures in dealing with a complaint against a legal practitioner.

12.6 SEYCHELLES POLICE FORCE – Twenty one (21) complaints were received against the police in 2020. These ranged from employment-related issues to allegations of police brutality, assault, failure to follow procedure and violations of rights. An ongoing weakness in respect of failure to follow and/or properly record police procedures is noted generally. To this end, I renew my call for the Police Force to reinforce established protocols and procedures for recording all incidents and complaints and set new procedures for any activities not currently covered. I continue to note that formal police statements are often undated and signatures of countersigning police officers are illegible with no mention of the name or police officer identification number.

The Police internal complaints handling mechanism remains a weakness for both potential complainants as well as the Ombudsman. To ensure open effective engagement with the Police Force in respect of complaints against police officers, it is vital that a dedicated and well-publicised complaints bureau is established to deal with complaints against police officers. Such a bureau should be independent of the main police station complaints offices which deal with general complaints and reports of offences. It should also be given maximum visibility and publicity so that the public are fully aware of its existence.



13 SYNOPSIS OF CASES 2020

13.1 SUPREME COURT FAILED TO FOLLOW STATUTORY PROCEDURE TO DEAL WITH COMPLAINTS AGAINST ATTORNEYS –

13.1.1 P's grievance was that his complaints against practicing attorneys had not been dealt with by the Supreme Court. He claimed that his instructed attorneys had caused him serious prejudice. His legal action had been dismissed by the court on a plea *in limine litis* and he was not advised of the outcome. He claimed that having filed complaints against his attorneys, he had expected to be formally "heard" by the Supreme Court but had instead been informed by letter that the Chief Justice had found no fault on the part of the lawyers who were ready to reimburse part of the legal fees paid for the case.

13.1.2 After considering the limitation in the Ombudsman's jurisdiction in Paragraph 2(b) of Schedule 5 of the Constitution of Seychelles in respect of any action "*concerning the performance of a judicial function or a judicial officer performing a judicial function,*" I concluded that I had the authority to investigate the complaint which, involved the administrative and procedural application of the judiciary's oversight role in supervising the work and conduct of legal practitioners.

13.1.3 My enquiry into the complaint considered (i) the process for dealing with complaints by members of the public against legal practitioners; (ii) the adjudicating body dealing with such complaints; and (iii) whether the principles of transparency, accountability and fairness were present in the process. The responsibility to supervise attorneys and consider complaints against legal practitioners rests, under [Section 7 of the Legal Practitioners Act \(Cap 111\) \(LPA\)](#) as amended, in the Supreme Court, represented by the Chief Justice.

13.1.4 Although the Chief Justice cooperated in this enquiry submitting requested information, it was made clear at the outset that my authority to inquire into the complaint was not accepted on grounds that the Ombudsman did not have jurisdiction in this matter. I found that I did.

13.1.5 The Judiciary outlined the complaints procedure against attorneys. A completed complaints form is filed either with the Registrar or with the Chief Justice's office; the complaint is verified by calling up the case file or writing



to the attorney after which a decision is taken to either close a matter that has no substance or has been sufficiently addressed through the correspondence with the lawyer or request more information from the attorney. Should the legal practitioner refuse to comply with a request to remedy his/her conduct, or it appears the legal practitioner's misconduct may require further investigation, the Chief Justice may refer the matter to the Legal Practitioners Disciplinary Committee set up under the LPA. This Committee will investigate the matter and report back to the Chief Justice with recommendations for further action. Any further official sanction against the attorney will be done through official court proceedings and is subject to an appeal through the ordinary court process.

- 13.1.6** Although the Judiciary claimed to have evaluated and dealt with P's grievance and had found nothing wrong in the alleged action of the attorneys, I did not have sight of any report of proceedings or minutes of the meeting to show how the court had found no abuse and no substantiated proof of professional misconduct. I considered the Supreme Court's supervisory role and the statutory procedure for dealing with complaints against lawyers as set out in the LPA and also considered the lawyer/client relationship under the LPA and its rules, as well as the lawyers' Code of Ethics. As the private nature of the latter relationship fell outside my remit, I focused on whether the relevant procedure had been followed in dealing with the complaint, and found that it had not.
- 13.1.7** I considered a written agreement, termed a "*retainer agreement*" between P and the law firm which established the contractual lawyer/client relationship for "legal representation". It was evident that this agreement, although an essential part of P's complaint, was not considered in the Chief Justice's evaluation of the complaint. It did not support the finding that the decision to refund part of the fees was an act of *generosity*. I opined that the refund was not based on any contractual obligation, and that by not having followed the statutory procedure in dealing with the complaint the Chief Justice had improperly exercised a discretionary power.
- 13.1.8** I formed the opinion that the Supreme Court was bound to follow the statutory procedure in dealing with complaints against attorneys despite having decided that the nature of the complaint was not serious enough. The decision to follow a more informal process of writing to the parties for an explanation and writing back to P upon evaluation of the response was not



provided for in the legislation even if such informal process was more practical and more appropriate for less serious accusations or complaints.

13.1.9 I recommended that the Supreme Court meet with P to agree on an amicable settlement to his complaint in the interests of the reputation and public image of the judiciary. I also recommended remedial action in establishing a Bar Council which should ensure that all legal practitioners are subject to a dedicated system of supervision of the profession with internal complaints handling mechanisms and processes to deal with complaints by and grievances of the public against members of the legal profession. I recognised that setting up a Bar Council would be a long haul process and recommended intermediary action by the Supreme Court in setting up operational guidelines designed to improve and facilitate complaints handling by the Judiciary, to include:

- A dedicated procedure for dealing with complaints against legal practitioners through a complaints office operating under standard procedures;
- A standardised Complaints forms to provide for better data capture;
- Revision of Rule 22(1) of the Legal Practitioners (Professional Conduct) Rules to provide a process to other institutions and members of the public to report misconduct.

13.2 MINISTRY FOR LANDS DID NOT OPERATE A PROPER LAND APPLICATION/ALLOCATION PROCESS

13.2.1 N, a small business entrepreneur, had been served a notice to vacate a plot of state-owned land from which a mobile food van business had operated since late 2013. N alleged that the eviction was unfair, arbitrary and would cause her serious hardship since the Ministry responsible for land use and state land allocation had engaged to provide her with land for a restaurant project and that the alternative plot offered was not suitable because it was away from the main thoroughfare and inconvenient for a food catering business because of its close proximity to waste bin sites.

13.2.2 N had been allocated a plot of land on which she set up a mobile food van business. She claimed that the understanding was that she would be allocated the site for a more permanent structure, but after five years the Ministry had failed to keep to its commitment to grant her a lease and had not included its commitments in its revised land use development plan for the



area. She was now being unfairly requested to vacate the site having invested both physically and financially.

- 13.2.3** My enquiry focused on whether the Ministry had committed to granting N a lease on the land, whether such commitment, if proven, should have been included in Government's revised land use plan for the area and, if so, whether that failure had caused loss to N; and finally whether the State had acted unfairly in ordering her to vacate the land.
- 13.2.4** Correspondence showed that N had established her mobile van on the land in the full knowledge of the relevant public authorities. The Ministry responsible for land use, the Planning Authority, the District Administrator and the Department of Transport were all aware in 2014, at the latest, that N had moved her mobile van onto the land. The ministry's argument that the site was to be used solely for the purposes of a mobile food van was inconsistent with my finding that N received, at the outset, direct assistance from the DA of the district by way of a letter addressed to the Public Utilities Corporation providing permission to locate the van and to connect electricity to the site.
- 13.2.5** The Ministry's argument that it alone could allocate State land and that the DA had no powers to do so was also weakened by the fact that the DA's 'authorisation' letter was enough for PUC to connect a power supply to a third party operator. In fact, the mobile van was connected. I found that N had therefore been authorised to occupy the land, and that the ministry had tacitly approved her presence on the property, by not taking any steps whatsoever to remove her or, at the very least, prevent her from setting up semi-permanent fixtures on the land. I observed that when the Ministry updated the Master Plan for the area, it would have seen the mobile van was on the land and had evolved. Still they took no steps. They had therefore tacitly committed to enabling N to set up and operate her business on the land.
- 13.2.6** Furthermore, the order to vacate the premises had been sent to N at the time when the case was being discussed with the Ministry as borne out in e-mails submitted for my consideration. Notably, I found that the Ministry had set a date for a meeting to discuss the issues even as it issued the notice several days later. In my opinion, this action was unreasonable and unjust under the circumstances.



- 13.2.7** I recommended that the Ministry enter into negotiations with N with a view to granting her the necessary permission and/or lease for the current site or, in the alternative, determine the most suitable site for her to continue with her activities or set up the proposed restaurant. In the alternative, I recommended that the ministry consider paying compensation to be agreed on between the parties for N to vacate the land. It is not within my jurisdiction to determine compensation or make any award.
- 13.2.8** I also considered the more general issue of the application process for state land and found that the absence of any recorded application form or documentation in respect of the alleged application for state land made it impossible to ascertain the nature, exact date and process of any application for land and/or the conditions under which N was granted authorisation to settle on the current plot. I took into account N's belief, right or wrong, that the DA was empowered to deal with her application and that the DA's word was sufficient to establish the relationship. In this respect, I took notice of the notorious authority wielded in 2013 by the DA as a catalyst in the realisation of district-based projects. Additionally, the Ministry had admitted that an 'application' had been received and registered but was subsequently lost or misplaced. It was never followed up. It was impossible to determine whether the 'application' had been in respect of the use of the land at a later date and not directly related to the original 2012/13 application, the subject matter of this enquiry. What was evident was that in the absence of a uniform application process in this case, much was left to speculation.
- 13.2.9** In conclusion, I found a serious deficiency in the administration of state land and in the methods for dealing with applications for land for business development projects. No clear procedure was followed in respect of receiving, handling and deciding upon applications for and allocating State land in this case. In fact, there does not appear to be any procedure. It was therefore impossible to determine what, if anything, may have gone wrong.
- 13.2.10 Establishing application procedures** – In my final report on this enquiry, I stressed the need for public officials to be reminded of their mandates and limitations as well as the importance of fully and effectively informing and educating the general public on the procedures. I also recommended that the Ministry and its partners establish clear application and allocation procedures and processes for applying for State land for business purposes, to include formal registered and marked application forms that contain all the



relevant information required for the process. This information can then be entered into a centralised database to enable registration of the application and its follow up through the system.

13.2.11 Public information campaign – I recommended that the Ministry carries out a major public information campaign making use of its websites and information pamphlets to provide regular and updated information to the general public. Information should include details of the role played by each institution involved in land allocation and management, (Planning Authority, the Department of Transport, the Seychelles Licensing Authority, the District Administration Office, and the Industrial Estates Agency and/or any other institution which is involved directly or indirectly in the allocation).

13.2.12 Lack of Land Use Plan – The lack of a public land use plan that the general public can readily access was seen as a major flaw in the administration of State land involved in this case. It appeared that the development of this valuable piece of state-owned real estate was/is not following a long term vision into which the public and all the relevant authorities could buy. This flaw had created the perfect environment for empty promises, misunderstandings and an apparent inability to make firm medium and long term commitments vital in the case of any real estate development whether for business or private dwelling purposes.

To address this weakness, and fulfil Government's policy to promote public private partnerships in development by providing State land, it is strongly recommended that, in the spirit of transparency and open government, Government creates a complete land use plan for all the districts and that such plan integrate an effective Master Plan of special development zones like Perseverance, Ile du Port and Providence, to be shared with the general public. I urged that every effort must be made to stop direct one-to-one discussions and 'arrangements' in respect of state land and recommended that as and when plots were ready for further development, Government, through the Ministry responsible for land use, should invite the general public to tender for development projects of the type earmarked for the area.

13.3 OMBUDSMAN'S OPINION ON AMENDING THE APPROPRIATION ACT 1 OF 2020

13.3.1 Following the closure of the airport and the economic downturn caused by the global wide COVID-19 pandemic in 2020, the Executive decided, in March 2020, to protect employment in Seychelles by directly assisting



businesses through direct state subsidies. To meet the impact of the economic crisis on the national budget, Government had to review expenditure levels across the public sector and re-allocate monies from the Consolidated Fund to those ministries, departments and agencies (MDAs) requiring additional funds. The outcome of the exercise was a new law to amend the Appropriation Act 1 of 2020. As part of this Ombudsman's own motion enquiry, I considered whether the amendment of the previously authorised expenditure allocation in the [Appropriation Act N° 1 of 2020 by the Appropriation \(Amendment\) Bill N°14 of 2020](#) and its revised Schedule was the constitutionally correct means of addressing the government's proposed spending plan to reduce the impact of the COVID-19 pandemic on the economy.

13.3.2 My enquiry focused on whether the introduction of the bill and its approval by the National Assembly (NA) could be considered anti-constitutional and therefore a question that could be referred to the Constitutional Court. My observations were drawn up in an opinion which was laid in an advisory capacity to both the Executive and the Legislature ahead of the Bill's presentation for its second reading in the NA on Tuesday 7th March 2020. The Office of the President did acknowledge receipt of the opinion while stressing the urgency of the situation. The Legislature, on the other hand, made no comment whatsoever. The bill was approved by the NA on 9th April and assented into law as the Appropriation (Amendment) Act on 11th April 2020. The following is a brief outline of the opinion.

13.3.3 The Republic's 'Purse' or Consolidated Fund – The budget process is a constitutional exercise carried out under its own Chapter XII of the Constitution, which provides for the finances of the Republic and the manner in which the 'national purse', i.e. the Consolidated Fund, is replenished and used for the purposes of the state machinery and national development. The same chapter provides for the legislative framework which enables taxes and other revenues to be collected for the state, as well as how those funds are used for the nation's day to day administration and other capital outlays and investments.

13.3.4 All the money received through taxes, etc. is paid into the **Consolidated Fund** established under Article 151, from which the Republic then draws money to pay for its activities and operations in situations set out in **Article 152**. That article provides that funds can only be withdrawn from the Consolidated Fund



to **meet expenditure charged on the Fund** by the Constitution or by an Act; or where **issue of money** has been **authorised** by an **Appropriation Act**, or by a **supplementary estimate** approved by resolution of the NA.

13.3.5 Procedure for Appropriation Act – Before the Ministry of Finance can obtain authorisation to use money from the Consolidated Fund, the Constitution sets a mandatory process conveniently headed “*Appropriation Act and statement of account*”. This process, contained in Article 154, has to be followed each year by the Minister responsible for Finance who must, not later than the thirtieth day after the beginning of each financial year, (defined in Article 154(9) as “*any period of twelve months beginning on 1st January in any year or any other date as may be prescribed by or under an Act*”) lay before the NA, a series of statements and estimates of revenue and expenditure of the Government for the financial year, after these have been approved by the Cabinet. This annual exercise enables the Executive to determine how much it needs to draw from the Consolidated Fund and for what purpose to keep the state machinery operating. This annual exercise was carried out in December 2019 for Government's estimates of revenue and expenditure for the 2020 financial year. The sum, broken down and presented in the estimates, was viewed and approved by the Legislature before authorising the Minister of Finance to draw down a total of SCR9,230,765,399 from the Consolidated Fund in 2020 in accordance with the Schedule in the Appropriation Act N°1 of 2020.

13.3.6 Can the Appropriation Act be amended? - The **Appropriation (Amendment) Bill N°14 of 2020** was submitted by the Executive for approval by the NA. The bill sought to amend **Act N°1 of 2020** in two ways: firstly, by repealing and amending the amount approved in Section 2 of Act N° 1 (*Nine Billion, Two Hundred and Thirty Million, Seven Hundred and Sixty-Five Thousand and Three Hundred and Ninety-Nine rupees*) and replacing it with the sum of Ten Billion, Four Hundred and Forty Seven Million, One Hundred and Fifty One Thousand and Five Hundred and Forty Seven rupees; and, secondly, by amending the Schedule with lesser or greater sums allocated to the various public services.

13.3.7 Exercise raised two issues – Firstly, that the Minister of Finance was looking to draw an additional **SCR1.2 billion** from the Consolidated Fund than had been previously approved for appropriation in 2020; and secondly, that the sums allocated to ministries, departments and agencies were being reduced or increased or remained the same.



I considered whether having approved the process in 2019 and having passed an Appropriation Act 2020, which was assented to on 26th December 2019, it was possible to amend that Act by a fresh appropriation act designed to meet the demand for additional sums to be appropriated from the Consolidated Fund for the exceptional circumstances caused by the COVID-19 pandemic.

13.3.8 Appropriation Act 'special and unique' – In my written opinion, I pointed to the 'special and unique' nature of the Appropriation Act which, I believe, was subject to special rules when it came to amendments. In support of my view, I pointed to the recurrent nature of the Appropriation Act which is the only act that is 'renewed' each year and is intended to operate only for a limited period of time - authorising expenditures for the duration of a single financial year. These 'annual' or 'perennial' acts never make reference to the previous law, notwithstanding the similarity and recurrent nature, and nor do they claim to repeal the previous act. In fact, I noted that all Appropriation Acts technically remain in the statute books, tending to show that they are unique one-of-a-kind and cannot be amended as is being proposed.

13.3.9 To be read as one – The unique nature of the Appropriation Act is emphasised further when considered in the light of the legal provisions for interpretation. Under Section 27 of Part V, entitled Repeal, Amendment and Expiry of Acts, of the [Interpretations and General Provisions Act \(Cap 103\)](#), an Act that amends any other Act "*shall be read as one with the other Act.*" I stressed that it was impossible to read the two acts 'one with the other' since there were numerous fundamental differences in the sums allocated to some public bodies while others were not affected by any changes and new allocations were made for some others.

13.3.10 Silence did not mean acquiescence – Conceding that the Constitution was silent on the subject of amendment of the appropriation act, I argued that such silence could not be interpreted in favour of amendment since there was no justifiable logic in amending, especially since the Constitution provided for other procedures to achieve the same result of voting more funds from the Consolidated Fund for exceptional and unforeseen needs.

13.3.11 Constitution provides for exceptional needs – I considered that precisely because the Constitution did not provide for amendments to an appropriation act once approved and passed into law, it did envisage a supplementary estimates process to cater for such changes. The impact of



the COVID-19 pandemic on the economy was precisely such an unforeseen circumstance that would justify a call for significant additional funds to mitigate the damage. Therefore, the supplementary estimates process under Article 154(6) would better attain the objective of the exercise.

13.3.12 Using a Contingencies Fund – Alternatively, I suggested that the process under Article 156 to establish a contingencies fund where the Minister of Finance “*is satisfied that there is an urgent and unforeseen need for expenditure for which no other provision exists*” as in the current COVID-19 pandemic situation could be used.

13.3.13 Question for Constitutional Court – I concluded that amending the Appropriations Act 1 of 2020 by passing a new amendment act was contrary to the Constitution; that the objective of the amendment could be fully and better achieved by the submission of Supplementary Estimates or by the establishment of a Contingencies Fund. I stressed that the matter was of sufficient gravity and importance to warrant the question being placed before the Constitutional Court of Seychelles for guidance. However, I did not take the question to the Court after the law was passed.

13.4 ENTERTAINING A ‘CONCERN’ NOT PROVIDED FOR IN REGULATIONS

13.4.1 S first complained to the Ombudsman in 2018 alleging that the Government was refusing to honour an agreement to exchange a parcel of state-owned land for a portion belonging to the complainant. The exchange was to regularise an encroachment of state land by S. A preliminary enquiry by my Office established that S had encroached part of the state-owned road reserve and that some seven years before, the parties had agreed to an exchange of land to settle the matter. I noted from documents presented with the complaint that all the elements of a contract were present and determined the complaint premature and advised S to pursue legal action before the Courts to seek specific performance of the contract.

13.4.2 He did so and in July 2019 obtained a Supreme Court judgment in his favour ordering specific performance of the contract and immediate transfers of the titles in exchange. The judgment contained errors in title numbers and was rectified two months later. But even after the rectification, it was not executed and the title could not be registered because the survey documents relating to the registration of the subdivisions of the parent parcel had been temporarily withdrawn by the Land Survey Division after the minister had



received an objection from an adjoining landowner that the subdivision would prevent adequate and proper access to that neighbour's land.

13.4.3 S returned to the Ombudsman complaining that he could not conclude the transfer and register the court order since the Registrar of Land had informed him that the title had not been registered. S could also not execute the judgment against the Government because of the Code of Civil Procedure (Cap 213) prohibition contained in Section 29(5).

13.4.4 Mediating a resolution – Since the complaint was borderline outside my jurisdiction as a judicial matter, I chose a mediatory approach, first seeking the views of the Attorney General who had represented the Ministry in the Supreme Court, to solve the issue in the best interests of all parties. I also requested an explanation from the Ministry of Habitat, Lands, Infrastructure & Land Transport (MHLILT) for not abiding by the lawful order of the Supreme Court, as well as the basis for the Minister's decision to stop registration of the surveyed plots; and the process followed by the Ministry under the Land Survey Act in respect of the survey and subdivision of the road access.

13.4.5 The Ministry was at pains to explain that it had not withdrawn but had temporarily recalled the title registration file acting on a 'concern' by the neighbour and not an 'objection' since the Land Survey Act did not provide for objections of cadastral boundaries and beacons on subsequent subdivisions.

13.4.6 Minister's Interference in the Registration Process was arbitrary, unreasonable and contrary to law – The Supreme Court had already ruled on the refusal to perform the contract, finding "*unreasonable, frivolous and vexatious*" the excuse that the ministry was looking into the neighbour's concern and ordering the State to proceed with the transfer as agreed. Based on the judicial findings alone, I could only reiterate that the Minister and MHLILT did not have the power in law to entertain the objection or concern since the parent state-owned parcel had been surveyed and subdivided by the State some 20 years previously. Consequently, I found arbitrary, unreasonable and contrary to law the Minister's decision to recall the surveyed and completed titles from the Registration Division. I was of the opinion that the significant and unnecessary delays in fulfilling the contractual undertakings were exacerbated by more unreasonable delays in abiding by the court order as rectified in September 2019. At the date of issue of my investigation report the matter was with the Attorney General who I recommended should complete



and register the transfer deeds with the Registrar of Lands as a matter of urgency.

13.4.7 Matter concluded – The matter was finally concluded in December 2020 only after S had incurred additional cost and had travelled in person to Seychelles to sign the transfer deeds despite having granted a power of attorney to a local representative. But that may be the subject matter of another complaint.

13.5 NO MECHANISM FOR THE LEGISLATURE’S ENGAGEMENT WITH CITIZENS

13.5.1 E. complained that the National Assembly refused to engage with him and consider his proposal for increasing participation of the ordinary citizen in public administration. He had proposed that the 6th National Assembly consider a law obliging all candidates for presidential elections to announce their Cabinet of Ministers and attributed portfolios ahead of elections so that the electorate could know in advance the composition of the government they elect. His proposal was addressed in writing to the Speaker asking that it be circulated to all the Members for consideration and debate. The Speaker confirmed in writing that E's proposal had been circulated to all House Members but stressed that it remained at the Members' discretion to entertain any proposal submitted to them. Dissatisfied that no member had followed up on his proposal, E wrote again to the Speaker asking if the matter would be debated in the 6th national Assembly.

13.5.2 Did NA’s refusal violate the constitutional right to participate? – E complained to this Office that by dismissing his proposal, which he considered serious and valid, the National Assembly had violated his right under Article 24 to participate in government. The Constitution guarantees any citizen aged 18 years to, inter alia, *“take part in the conduct of public affairs either directly or through freely chosen representatives.”*

13.5.3 Electoral Commission could not take on proposal – E made the same proposal to the Office of the Electoral Commission who had responded that since the law only requires a candidate to nominate his Vice President and did not require a presidential candidate to disclose his Ministers and their portfolios ahead of polls, it would be unlawful for the Commission to demand otherwise. The Commission advised E to submit his proposal directly to the National Assembly if he wished them to discuss it.



- 13.5.4 MNAs not obliged to accept citizen's proposals** – Taking up the complaint, the Ombudsman asked the Speaker for the current procedures enabling citizens to engage with the legislature. He responded that he had circulated E's proposal and had responded to all E's correspondence but that his office had no power to force Members to debate on any proposal from a citizen. He stressed that although citizens could directly lobby their Members within their respective constituencies, it remained up to the member to address or reject a citizen's proposal. A copy of the relevant rules on debate on motions under the National Assembly Standing Orders was also submitted to this Office.
- 13.5.5 No laws covering citizens' participation in government** – My enquiry showed that notwithstanding the constitutional provisions of Article 24 (2), which provides that the exercise of the right to participate may be regulated by a law necessary in a democratic society, there were no legal provisions currently in place to engage citizens' participation in government. I noted that the procedure to deal with debate on motions under the National Assembly Standing Orders 2009 is silent on the matter of citizens' participation in government. I recognised the value of developing the legal and administrative framework that could enable citizens' participation in the legislative process. However, while my mandate does give me the power to question the constitutionality of a law, law reform properly remains directly within the mandate of the Executive and the Legislature.
- 13.5.6 Establishing platforms for engagement & lobbying** – Meanwhile, the practical way for the citizen to engage in the public process of administration in the present state of the law remains direct engagement and sensitization of members through the age-old lobby process. This is not well-developed in Seychelles. The Ombudsman recommends that this may be an area for future development through the Citizens Engagement Platform and rights-based non-governmental organizations. E was advised to follow up on his proposal through civil society inputs into the law reform process.
- 13.6 FAILING TO FOLLOW STATUTORY PROCEDURE ON LAND RECLAMATION**
- 13.6.1** H alleged unfair treatment by the Ministry of Habitat, Land, Infrastructure & Land Transport (MHLILT) responsible for land use over a request to purchase a small portion of reclaimed land adjacent to his own. The complainant's land was previously situated directly on the shoreline until the State carried out major reclamation works in the area and backfilled a small area of less than 400 square metres abutting H's property. H claimed he had applied several



years before to buy the portion because it remained vacant and had become the source of continued nuisance to his household.

13.6.2 Land earmarked for community purpose – Negotiations with the State to buy the land were not progressing as the Ministry was not in favour of selling because they wanted to use the land for a community purpose. H complained to the Ombudsman. I reviewed the reclamation process carried out by the State in relation to the law and considered whether owning the adjoining property gave H any entitlement to the reclaimed portion and whether that could oblige the State to sell him the land.

13.6.3 Power to reclaim land – Under the **Land Reclamation Act (LRA) (Cap 106)** the State can *authorise* reclamation works in circumstances where it intends to carry out reclamations, even if the reclamation abuts privately-owned land. However, the legislation sets out an application procedure for such authorisation which “*shall be followed as far as possible.*”

13.6.4 Statutory Procedure to follow – The procedure involves a formal application containing details of the boundaries and area to be reclaimed as well as identification of the reclamation site. This information must then be published in a notice in the Official Gazette and in a local newspaper giving details of the boundaries, surface area and where a plan can be viewed by the public. The notification allows for objections to be made to the reclamation within a specified time frame. Objections can be that the reclamation would adversely affect personal rights of ownership or occupation, or adversely affect public rights or the natural beauty of the coastal area. Following this process, authority for the reclamation may be granted subject to conditions, but the authorisation must “specify the boundaries and the area of the foreshore to be filled in”.

13.6.5 State reclaimed the land – In this case, the reclamation was made by the State which has wider powers to reclaim land, whether from the sea bed or by extending the foreshore even if it does not own the land on the shoreline. However, the State is still subject to the mandatory requirements of notification by publication of the proposed reclamation or works “*in accordance with the rules in the Second Schedule to the LRA*”. When asked to, the MHLILT could not produce proof of any notifications in respect of this reclamation. It had clearly failed to follow the mandatory procedure. I found that this failure was fatal to the process and had the effect of rendering unlawful the part of the reclamation abutting H's land.



13.6.6 Retrospective Authority for unlawful reclamation – While the enquiry report was being drawn up, MHLILT submitted an order for retrospective authority under the LRA in respect of the land under enquiry. I considered the relevant provisions of the LRA that allow for retrospective authority to be granted where the statutory procedure for authorisation was not followed.

Retrospective authority is evidently intended to regularise what would otherwise be an unlawful reclamation. However, the retrospective authority for this particular portion of reclaimed land was being given over fifteen years after the abutting reclamation had been completed. I concluded that although it gave legal status to the reclamation, it could not absolve the State of its failure to follow the mandatory procedure with respect to notification which had had the adverse effect of depriving the owner of the adjoining private land of the right and opportunity to object to the reclamation and claim compensation at the time.

13.6.7 Community Purpose not established – The MHLILT had argued that the land had been reclaimed for a community purpose but completely failed to support this contention either in action or in law. I considered that had the State intended to reclaim land for the stated community purpose, it would have been reasonable to expect to see a project plan or outline. It would have been equally reasonable for the statutory procedure to have been followed using that project plan with its demarcated boundaries and plot surface. More specifically, the size of the reclaimed parcel, less than 400 square metres, raised a serious doubt as to its potential community purpose. In fact, all this added credibility to H's contention that the small piece of reclamation in this case had been created with the sludge removed by the backhoes to deepen the sea in front of his property.

13.6.8 State had Broken the Law – I concluded that the State had not followed the statutory procedure set out in the LRA before reclaiming land abutting on H's private land. By failing to follow the mandatory procedure requiring notification of the boundaries and extent of the reclamation, H had been deprived of the opportunity to object to the reclamation works. I found the State's action contrary to law, unjust and oppressive.

13.6.9 Recommended Sale of Reclaimed Parcel to H – The retrospective order may have legitimised the reclamation but could not absolve the State of its failure. To redress the wrong, I recommended remedial action under the LRA which allows the State to negotiate with a land owner to sell the reclaimed land on



such terms and conditions the State may consider necessary. Such terms could include reserving a narrow access corridor if the community purpose was to be maintained.

13.7 UNFAIRLY TERMINATING TEACHER'S EMPLOYMENT ON GROUNDS OF ILL HEALTH

13.7.1 N, a former school teacher with almost 30 years service, suffered from a debilitating illness which affected her performance to the point that she was assessed by the Medical Board and found to be unfit for work. Acting on the Medical Board's recommendation that she be retired early on grounds of ill health, her employer, the Ministry of Education (ME), sought approval for early retirement from the Department of Public Administration (DPA). The ME was instructed to terminate her employment, backdating the termination one month prior to the approval date. N understood that her termination would entitle her to all pension rights and invalidity benefits for the rest of her life. She received an appreciation of her years of service from the President as well as a permanent disability pension from the Seychelles Pension Fund (SPF). However, after being assessed "100% unfit for work" and receiving invalidity benefits from the Agency of Social Protection (ASP) for three consecutive six-month periods, she was informed that she would no longer receive the benefit because she was capable of other work. She complained to the Ombudsman who considered several issues in her grievance, including the manner in which her employment as a teacher had been terminated by the ME on grounds of ill health as assessed by the Medical Board, as well as her assumption that she would qualify for monthly invalidity benefits on a permanent basis, the Medical Board's re-assessment of her status and the decision to stop payments on the ground that she could resume work.

13.7.2 Medical Board recommended early retirement with all benefits – The Medical Board of the Public Health Authority had recommended early retirement on medical grounds basing its recommendation on the complainant's persistent ill health and the years of long service employed as a teacher by the ME. Both the employer and the SPF had accepted and acted upon the recommendation – the education ministry to terminate her employment and the SPF by granting her a permanent incapacity pension.

13.7.3 Medical Board assessed N unfit to work – I reviewed the role of the Medical Board in the assessment process for the allocation of social welfare and found that the Board had acted unreasonably by ordering the complainant to go back to work after she had been terminated on grounds of ill health. After



having found her “100% unfit” at the last assessment and having noted no change in her condition in that time, it was unclear how the Board could have found her to be fit for work six months later without having physically met with her before discontinuing the financial assistance.

- 13.7.4 ME wrongly terminated N's employment** – The ME acted on the Medical Board's recommendation in seeking approval from the Department of Public Administration (DPA) to terminate N's appointment. No explanation was given for the DPA approving that her appointment be terminated with effect from one month prior to the actual termination date. I found that the ME had acted wrongly in terminating her employment on medical grounds when the Medical Board had recommended *early retirement*. They were also wrong to have backdated the termination. I concluded that the decision to terminate her appointment was wrong; the correct action would have been to retire her formally.
- 13.7.5 ME failed to consider redeployment** – The Ministry had not considered offering N alternative work within the Ministry that would have been better suited to her medical condition, knowing that she was still over thirteen years away from the legal pensionable age, and that she could do other work. I opined that the ME could and should have sought to redeploy N to a position better suited to her health condition, if they considered her to be still capable of working in another field. Having failed to do so and having proceeded with terminating her employment on medical grounds, despite all indications that she was to be retired from service, I found that it was now incumbent on the relevant authorities to ensure that she was able to fully benefit from all the sickness and pensionable benefits she had been promised at the time of her termination.
- 13.7.6 Retired and not fired** – The personalised letter of appreciation from the President clearly stated that N was being retired early after her many years of service. Additionally, the fact that she received a permanent incapacity pension from the SPF from the date of termination reinforced her understanding that she was prematurely retired. This had also influenced her decision not to file a complaint in the Public Service Appeals Board in respect of the termination.
- 13.7.7 Qualified for invalidity benefits because unfit for work** – I noted that when first assessed by the Social Security Medical Board for eligibility to benefits under the social security fund, she had been found to be totally unfit for work. After



receiving monthly invalidity benefits for an initial period of six months, the Board still found her unfit upon review and again another six months later. During that time she continued to receive the invalidity benefits. However, after the last review, and despite having been found to be still "100% unfit", assistance was approved for only six more months after which she was expected to reintegrate work.

13.7.8 Failure to communicate information in a timely manner – I found that the ASP had failed to inform her in good time of the outcome of last assessment. She only knew that the assistance would be discontinued over seven months later. The ASP reassured me that they would review the notification process by which claimants are kept informed of the outcomes of applications for financial assistance.

13.7.9 Back payment of invalidity benefits – After payment of invalidity benefits had ceased, N had applied for and was paid social welfare assistance from the ASP in a reduced monthly payment which she received over a six-month period. This was less than she would have received in invalidity benefits. I recommended that she should be paid the difference.

13.7.10 N should have been retired – It was clear that N's health issues were serious enough to warrant early retirement as a teacher. She correctly and reasonably understood with almost thirty years service behind her that this meant she would be prematurely retired on grounds of ill health and that her appointment was ending with all the sickness and pensionable benefits, as stated in the medical report. She reasonably understood this to mean that she would not be going back to work and that she would receive a pension and other benefits for the rest of her life.

13.7.11 Recommendations – Having found in her favour, my recommendations in this case were aimed at addressing the unfairness in the decisions taken by the Medical Board, the ASP and the Ministry of Education and the resulting hardship caused to N. I recommended that the ASP treat her as permanently incapacitated and use the exceptional circumstances provision to extend invalidity benefits in view of her health and age. I also recommended that there should be no further reviews of her health status since the Medical Board had recommended early retirement on ground of her acknowledged ill health and the relevant parties had already acted on that premise. I recommended payment of the shortfall on the invalidity benefits that she should have been paid and called upon the ME to review the date it had

terminated her appointment, rectify her employment records and adjust any end of term dues accordingly.

13.7.12 Setting Policy on Early Retirement on grounds of ill health – This case raised important issues of the procedure to be adopted in similar cases involving public officers. I recommended that in cases where ill health affects a public officer's capacity to deliver and the public officer is being considered for termination upon medical grounds but is deemed capable of doing other work although not of the type in which he/she is employed at the time, it should be adopted as best practice for all employers across the public service to consider a transfer within the service or alternative employment for the officer firstly, within the ministry, agency or authority, or where this is not possible, within the public service generally before any decision to terminate is taken. Similarly, where a medical board makes any recommendation for early retirement or termination of appointment of an employee on medical grounds, all ministries, agencies or public authorities must ensure that clear procedures are followed with respect to early retirement. Where the termination option is chosen, the employee it must be made fully aware that the employment is being **terminated** and that the employee will be expected to reintegrate the world of work when his/her condition improves; AND the employer must assist the employee, prior to termination, in finding/retraining for a suitable change of career and position.



AOMF General Meeting Brussels 2019 (Photo credit: AOMF Website)



14 STRATEGIC PARTNERSHIPS & MEMBERSHIPS

14.1 AOMF (ASSOCIATION DES OMBUDSMAN & MEDIATEURS DE LA FRANCOPHONIE)

– The Office of the Ombudsman is a member since 1999 of the [Association des Médiateurs et Ombudsmans de la Francophonie](#) (AOMF), the international body comprising Ombudsman institutions and its equivalent (*médiateurs*) in French-speaking states. The AOMF's primary role is to promote the development and consolidation of independent mediation institutions with a view to enabling democratic best practices, social peace and the protection and advancement of human rights. Its significant research and training capabilities help member institutions train staff and develop the highest professional standards of ombudsman and mediator institutions. Due to the travel bans caused by the COVID-19 pandemic all training sessions, workshops, meetings and conventions organized by the AOMF for 2020 were cancelled although the Executive Committee did meet in a Zoom session in June. I was elected to the Executive Committee as a member representing the Indian Ocean region in the last AGM in 2019. My mandate is due to end at the next AGM scheduled for November 2021.

Membership fees – Membership fees are paid annually in the sum of Euros 1,000. However, as part of the cost cutting exercises of 2020, I solicited and obtained from the AOMF a reduction in the fees approved for the reduced sum of **Euros 500**. A similar exercise is envisaged for 2021.

14.2 AOMA (ASSOCIATION OF OMBUDSMAN AND MEDIATORS OF AFRICA) – The

Office is also a member of the [African Ombudsman and Mediators Association](#) (AOMA) since its creation in 2003. AOMA's objectives are to encourage the establishment and promotion of Ombudsman institutions in Africa; foster mutual support, co-operation and joint activity through information sharing, training and development of Ombudsman and staff; promote good governance, transparency and administrative justice; and support and promote the autonomy and independence of Ombudsman offices. Our Office has participated in meetings, workshops and training sessions organized by AOMA and its research arm the African Ombudsman Research Centre (AORC) based in Durban, South Africa. I was elected as Deputy Secretary General of AOMA in November 2019.

In recognition of the pioneering role of the Seychelles Ombudsman in hosting the 7th African Regional Ombudsman Conference in July 2001 which paved



the way for the establishment of AOMA, I intend to propose that Seychelles hosts the 20th anniversary of the creation of AOMA in 2023. However, this project may have to be put on hold in view of the current financial and economic situation caused by the COVID pandemic.

Membership fees – Membership fees are paid annually in the sum of US\$ 1,000. To meet the financial constraints of 2020, I also solicited and obtained a reduction in AOMA's membership fees approved for the reduced sum of **US\$ 500**. A similar exercise is envisaged for 2021.

14.3 INTERNATIONAL OMBUDSMAN INSTITUTE (IOI) – The Office is not currently a member of this global organisation of Ombudsman which regroups more than 198 independent Ombudsman institutions from more than 100 countries worldwide in six regional chapters (Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America and North America). The IOI's objectives focus on capacity building and good governance, and it provides technical support to its members in training, research and regional subsidies for projects. As the main international institution to which Ombudsman across the world are affiliated, I believe it is in the best interests of the Office to join as a member as soon as our finances permit. I had planned to submit a membership application in 2020. However, in view of our current financial constraints the application will be deferred to 2022 at the earliest.

14.4 PUBLIC OFFICERS ETHICS COMMISSION – The Ombudsman is an *ex-officio* member of the [Public Officers Ethics Commission](#) (POEC) along with the Auditor-General and the Chairman of the Constitutional Appointments Authority. (Public Officers Ethics Act 14 of 2008). Meetings of the POEC are held on a regular basis every two months, upon notice of the Chief Executive Officer. As Ombudsman I have contributed to the advisory process of this institution which oversees the collection of asset declarations by high ranking public officers.



15 GENERAL RECOMMENDATIONS

This Chapter is intended as a reference for some of the Ombudsman's general recommendations made in this Report and elsewhere.

- 15.1 REVIEWING THE OMBUDSMAN'S LEGISLATION** – The Executive and the Legislature should consider revising the existing legal framework governing the Ombudsman's mandate to directly include mediation as a task of the Office. This could be done in a dedicated stand-alone Ombudsman law as envisaged in **Article 143 (6)** of the Constitution which “*may provide for any matter, not otherwise provided for under this Article, necessary or expedient for the purpose of ensuring the independence, impartiality and effectiveness of the office of the Ombudsman.*” The Ombudsman will submit proposals in 2021.
- 15.2 INCOMPLETE PUBLIC & OFFICIAL DOCUMENTS** – I continue to note a general weakness across many public authorities in respect of important official documents, such as job descriptions, position papers, reports, and sometimes even official and statutory forms. A document that is incomplete, lacks the date, signature or other identifications cannot serve its full purpose to fix the time and identify its provenance. Statutory forms are particularly important, often without reference to the law or regulation under which they are drawn up. All public authorities **MUST** review all their official documentation and statutory forms to ensure that this anomaly is fully addressed and that all official forms carry the correct formulation in accordance with the relevant regulations.
- 15.3 ESTABLISHING POLICY & PROCEDURES FOR EARLY RETIREMENT/TERMINATION ON GROUNDS OF ILL HEALTH** – The case discussed in Paragraph 13.7 above raised important issues of the procedure to be adopted in cases where public officers are considered for early retirement or termination on grounds of ill health. In cases where ill health affects a public officer's capacity to deliver and the public officer is being considered for termination upon medical grounds but is deemed capable of other work, it should be adopted as best practice, before any decision to terminate is taken, for all public service employers to consider a transfer within the service or alternative employment firstly, within the ministry, agency or authority, or where this is not possible, within the public service generally especially where the public officer's age and length of service warrant such justice. Similarly, all ministries, agencies or



public authorities must ensure that clear procedures are set and followed with respect to early retirement in cases where a medical board makes any recommendation for early retirement or termination of appointment of an employee on medical grounds.

- 15.4 CONTINUITY & AVOIDANCE OF LOSS OF INSTITUTIONAL MEMORY** – The recommendation made in my 2019 report in respect of institutional memory takes on renewed importance in this transitional period of government when there may be a major rotation of public officers throughout the service. It is remains vital for all ministries and departments to bear in mind that the public authority must ensure continuity of all public services. Therefore, before senior staff transfers are completed a designated person must be appointed and remain fully appraised of any ongoing matters within that public service. In particular, such staff movements should not impact ongoing enquiries from the Ombudsman.
- 15.5 PROPER CLOSURE OF STATUTORY BODIES** – In the course of an enquiry involving the lease of state land in Providence Industrial Estate, I found that a failure to ensure a proper handover from one statutory body upon its dissolution had resulted in the loss of important files, including valid long-term registered lease agreements. I was unable to determine whether the statutory authority had been liquidated upon its 'closure' and found no information on what had been decided in respect of the body's memory bank. I reiterate the recommendations that any statutory body should be properly liquidated and any assets and liabilities duly disposed of within good time of its closure. I also recommended that ownership of state land should not be granted to statutory authorities since transfers to third parties could be completed without the full consensus of the state.
- 15.6 REVIEW OF PUBLIC AUTHORITIES & STATUTORY BODIES** – I draw attention to the overlaps of portfolios and portfolio responsibilities within and between ministries caused by the creation of statutory bodies over recent years. In addition to the issues posed by overlaps in functions and responsibilities of the institutions, I have observed difficulties in obtaining reliable information in my dealings with the institutions. I recommend that clear lines of communication must be set up to facilitate exchange between all these bodies.
- 15.7 ADDRESSING THE LACK OF SUPPORT FROM SOME PUBLIC AUTHORITIES** – The failure of public authorities to accept and follow up on recommendations and



remedial action proposed by the Ombudsman will be brought to the attention of both the Executive and the Legislature immediately after any deadline for implementation has passed. In this way the Ombudsman will keep the two arms of State fully apprised of the work of this Office. The Ombudsman formally calls upon the Office of the President and the National Assembly to secure greater compliance with the recommendations to guarantee an improved public service.

- 15.8 LOBBYING FOR FINANCIAL & ADMINISTRATIVE AUTONOMY** – The Ombudsman seeks to engage with the Executive and Legislature on how best to ensure financial and administrative autonomy and independence while maintaining transparency and accountability.
- 15.9 SETTING UP CUSTOMER COMPLAINTS HANDLING MECHANISMS** – All public authorities (ministries, departments, agencies and state-owned enterprises) must set up effective internal complaints' handling mechanisms to deal with complaints and grievances and improve their service delivery.
- 15.10 RATIONALISING NATIONAL COMPLAINTS MECHANISMS IN RESPECT OF PUBLIC OFFICERS** – The Executive and the Legislature should look into the national employment-related complaints mechanisms under the Employment Act or the Public Service Orders, the Public Service Appeals Board or the Employment Tribunal with a view to rationalising and eventually streamlining their functions in respect of public officers.



16 ACKNOWLEDGEMENTS

- 16.1** I conclude this Report by firstly acknowledging and thanking the citizens of Seychelles for the trust they place in this institution in their search for fairness and justice. This pandemic year has given us a golden opportunity to build back better; and what better way to do so than by making the change to improve the way we work. By adopting the principles of fairness and objectivity as the hallmark of this Office, I find that taking time to explain and to show empathy is often enough for complainants to accept the outcome of my enquiry, even when it is not in their favour. I strongly recommend this same approach to all decision makers in all public authorities.
- 16.2** I recognise the patience displayed by those complainants who have experienced and continue to experience excessive delays in the handling of their complaints by my Office. This remains a weakness on our part despite our best efforts to reduce the delays, experienced primarily at the report-writing stage. We continue to address this in our strategic initiatives to continuously improve upon our own service delivery.
- 16.3** I am deeply grateful for the relentless support of my small team without whose devotion and dedication this Office would not have been able to accomplish what we have achieved this far. The team remains fully committed to dealing with the increasing demands for our services. We continue to build our internal capacity to improve our efficiency and enable us to provide a wider and better service across all the areas of our mandate. Together we pledge to continue working towards making a substantive and real difference for the betterment of our society.
- 16.4** I also thank the public officers across many institutions who fully cooperated and worked with my Office in this past year and whose participation has helped make a difference, not only to the complaining citizens, but also to their ministries and agencies and the public service as a whole. No one is perfect and mistakes do happen and rules are sometimes bent or broken. But we must remain committed to rectifying administrative errors and improving government services in a continuous and sustained effort. Only then, as we emerge from this difficult year, can we build back better ***'that fair, open, accountable and effective public service'***.

Nichole Tirant-Gherardi
Ombudsman



APPENDIX I

LEGISLATIVE FRAMEWORK

The legislative framework for the Institution of the Ombudsman is contained in **Chapter X** of the **Constitution of Seychelles**, more specifically in the following articles:

Article 143 – Ombudsman

- (1) There shall be an Ombudsman who shall be appointed by the President from candidates proposed by the Constitutional Appointments Authority.
- (2) A person is qualified for appointment as Ombudsman if –
 - (a) the person is a citizen of Seychelles;
 - (b) the person is of proven integrity and impartiality;
 - (c) the Constitutional Appointments Authority is of the opinion that the person possesses demonstrated competence and experience and can effectively discharge the functions of the office of Ombudsman; and
 - (d) the person is not a member of the National Assembly or Judiciary or a Minister or the President or a candidate in an election under this Constitution.
- (3) Subject to this Constitution, the Ombudsman shall not, in the performance of the office of Ombudsman, be subject to the direction or control of any person or authority.
- (4) The person holding office as Ombudsman shall not hold any other public office of emolument or engage in any occupation for reward outside the functions of the office of Ombudsman which might compromise the integrity, impartiality and independence of that office.
- (5) **Schedule 5 shall have effect with regard to the Ombudsman.**
- (6) An Act may provide for any matter, not otherwise provided for under this article, necessary or expedient for the purpose of ensuring the independence, impartiality and effectiveness of the office of Ombudsman.



Article 144 – Tenure of office of Ombudsman

- (1) A person shall be appointed to the office of Ombudsman for a term of seven years, and is eligible for reappointment at the end of the term.
- (2) A person holding the office of Ombudsman shall vacate the office on death, if the person, by writing addressed to the President, resigns, if the person is removed from office or at the end of a term of office.
- (3) Where a person holding office as Ombudsman resigns, the resignation has effect on the date it is received by the President.
- (4) The salary, allowances and gratuity payable to the Ombudsman shall be prescribed by or under an Act and the salary, allowances or gratuity so payable shall be a charge on the Consolidated Fund.
- (5) Subject to article 166, the salary, allowances or gratuity payable to and the term of office and other conditions of service of the Ombudsman shall not be altered to the disadvantage of the Ombudsman after appointment.

Schedule 5 of the Constitution

Functions of the Ombudsman

1. (1) Subject to this Schedule, the Ombudsman may
 - (a) investigate an action taken by a public authority or the President, Minister, officer or member of the public authority, being action taken in the exercise of the administrative functions of the public authority in the circumstances specified in subparagraph (2);
 - (b) investigate an allegation of fraud or corruption in connection with the exercise by a person of a function of a public authority;
 - (c) assist an individual complainant in respect of legal proceedings in relation to a contravention of the provisions of the Charter;
 - (d) with leave of the Court hearing proceedings relating to a contravention of the provisions of the Charter, become a party to the proceedings;



- (e) Initiate proceedings relating to the constitutionality of a law or of the provisions of a law.
- (2)** The Ombudsman shall investigate an action under subparagraph (1) (a) –
- (a) where the Ombudsman receives a complaint from a person or body alleging that the complainant has suffered a violation of the complainant's fundamental rights or freedoms under the Charter, or an injustice, in consequence of a fault in the administration of a public authority or has been treated harshly or oppressively by the authority or the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority;
- (b) where the President or a Minister or member of the National Assembly requests the Ombudsman to investigate the action on the ground that the person or body specified in the request –
- (i) has or may have suffered a violation of the person's or body's fundamental rights or freedoms under the Charter, or an injustice, in consequence of a fault in the administration of a public authority or of a fault of the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority;
- (ii) has been treated harshly or oppressively by the authority or the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority,



or on the ground that the practices or patterns of conduct of a public authority or the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority appear to result in injustices or harsh, oppressive or unfair administration; or

- (c) where the Ombudsman considers that it is necessary to investigate the action on the grounds specified in subparagraph (b), and an allegation under subparagraph (1)(b).

(3) The Ombudsman shall not investigate or may discontinue an investigation of a complaint relating to an action referred in subparagraph (1)(a) or an allegation under subparagraph (1)(b) where it appears to the Ombudsman that –

- (a) the complaint or allegation is frivolous, vexatious or trivial or not made in good faith;
- (b) the making of the complaint or allegation has, without reasonable cause, been delayed for more than twelve months;
- (c) in the case of a complaint relating to subparagraph (1)(a), the complainant does not have sufficient interest in the subject matter of the complaint;
- (d) in the case of a complaint relating to subparagraph (1)(a), the complainant has or had, by way of remedy under this Constitution or any other law, a right of appeal, objection or review on merits and the complainant has not exhausted the remedy, unless the Ombudsman believes that in the particular circumstances it is or was not reasonable to expect the complainant to exhaust or to have exhausted the remedy.

(4) In this Schedule –



“**action**” includes a failure to act, an advice or a recommendation;

“**body**” means a body of persons whether corporate or incorporate;

“**investigation**” means an investigation in terms of this Schedule;

“**public authority**” means a Ministry, a department, division or agency of the Government or a statutory corporation or a limited liability company which is directly or ultimately under the control of Government or any other body which is carrying out a governmental function or service or a person or body specified by an Act.

Excluded matters

2. The Ombudsman shall not investigate an action referred to in paragraph 1(1) (a) –
 - (a) in respect of a subject matter which the President or the relevant Minister certifies may affect the relation or dealing between the Government of Seychelles and any other Government or international organisation, the security of the Republic or the investigation of crime;
 - (b) concerning the performance of a judicial function or a Justice of Appeal, Judge or person performing a judicial function;
 - (c) taken with respect to orders or directions to a disciplinary force or a member of the force; or
 - (d) unless the person aggrieved is resident in Seychelles or the action was taken in respect of the person aggrieved while the person was present in Seychelles or in respect of rights or obligations that arose or accrued in Seychelles.



Investigative power of Ombudsman

3. Subject to this Schedule, the Ombudsman has the same power as a judge of the Supreme Court in respect of the attendance of a person before the Ombudsman, the examination of any person in relation to an investigation, the production of a document or record relevant to an investigation and the inspection of premises relevant to an investigation.

Privileged information

4. **(1)** Subject to this paragraph, a person shall not refuse to answer any question or withhold any document, information, record or thing or refuse to make available to the Ombudsman any document, information, record or thing or refuse access to the Ombudsman to any premises relating to an investigation, on the ground that the answering of the question or disclosure of the document information, record or thing or making available of any document, information, record or thing or the granting of access to any premises would be injurious to the public interest, contrary to a law or in breach of a privilege or an obligation, whether contractual or otherwise.
- (2)** Where a certificate certifying that the answering of a question, the disclosure of document, information, record or thing, the making available of a document, record or information or thing or the granting of access to any premises would be contrary to public interest is issued by –
 - (a) the President –
 - (i) because it might prejudice the security of the Republic or international relations



- between the Government of Seychelles and any other Government or international organization; or
 - (ii) because it involves the disclosure of the proceedings of the Cabinet;
- (b) the Attorney-General because it might prejudice the investigation or detection of crime,

the Ombudsman shall not require a person to answer the question, disclose the document, information, record or thing, make available the document, information, record or thing or grant access to premises, as the case may be.

Investigation

- 5. (1)** The Ombudsman shall, when carrying out an investigation, act fairly and judicially and shall, in particular, afford any public authority or person alleged to have taken or authorised an action or responsible for the administration of the public authority which is the subject of an investigation an opportunity to be heard.
- (2)** Subject to subparagraph (1), the Ombudsman shall determine the procedures to be followed when conducting an investigation.

Report

- 6. (1)** Subject to subparagraph (7), where after an investigation the Ombudsman is of the opinion that –
- (a) the action which was the subject of the investigation –
 - (i) was contrary to law;



- (ii) was unreasonable, unjust, oppressive or discriminatory;
 - (iii) was based on a mistake of facts or a wrongful assessment of facts;
 - (iv) was based partly on a mistake of law and facts;
 - (v) was based on an improper exercise of a discretionary power or an exercise of a discretionary power based on irrelevant considerations;
 - (vi) was an improper refusal to exercise a discretionary or power;
 - (vii) was based on an exercise or improper use of authority or power;
 - (viii) was in accordance with law but the law is unreasonable, unjust, oppressive or discriminatory;
 - (ix) was otherwise, in all circumstances, wrong;
 - (x) should be cancelled, varied or given further consideration; or
-
- (b) reasons for the action which was the subject of the investigation should have been given;
 - (c) there was unreasonable delay before the decision or action which was the subject of the investigation was taken;
 - (d) there was an omission which needs to be rectified;
 - (e) the law or practice on which the action which is the subject of the investigation is based should be reconsidered;
 - (f) the practice or pattern of conduct of a public authority or the President, a Minister, officer or member of the public authority which is the



subject of the investigation is contrary to law or unreasonable, unjust, harsh, oppressive or discriminatory; or

- (g) the allegation of fraud or corruption is well founded,

the Ombudsman shall report the opinion and reasons together with any recommendation or remedy the Ombudsman considers fit to make to the President, Minister, officer, member or chief executive officer of the public authority, as the case may be.

(2) The Ombudsman shall, where the report is not required to be sent to the President or Minister, send a copy of the report to the President and any relevant Minister.

(3) The Ombudsman may specify in the report referred to in subparagraph (1) a time limit within which it is reasonable for the report to be acted upon.

(4) Where a report submitted under subparagraph (1) is not, in the opinion of the Ombudsman, adequately acted upon –

- (a) within the time specified in the report; or
- (b) if no time has been specified, within such reasonable time as the Ombudsman is of the opinion is reasonable,

the Ombudsman may submit the report and recommendation together with such further observations the Ombudsman thinks fit to make to the President and the National Assembly.



- (5) The Ombudsman shall attach to every report submitted to the President and the National Assembly under subparagraph (4) a copy of any comments made thereon by or on behalf of the chief executive officer of the public authority concerned or the President, Minister, officer or member of the public authority, as the case may be.
- (6) The Ombudsman shall not later than the thirty-first January in each year make a general report to the National Assembly with a copy to the President on the exercise of the functions of the Ombudsman under this Constitution during the previous year.
- (7) The Ombudsman shall, in every case where a complaint is received by the Ombudsman, inform the complainant of the result of the complaint.

Miscellaneous provisions relating to Ombudsman

- 7. (1) For the purposes of the law of defamation, absolute privilege is attached to the publication of any matter by the Ombudsman or any other person acting under the authority of the Ombudsman.
- (2) The Ombudsman or any other person acting under the authority of the Ombudsman shall not be liable for anything done or omitted to be done in good faith in the performance or purported performance of the functions of the Ombudsman.

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APPENDIX II

Strategic Statement for period 2018 - 2021

Established under the 1993 Constitution of Seychelles, the Ombudsman's core activity is to examine and investigate complaints about administrative actions, delays, or inaction adversely affecting persons or bodies in their dealings with public service providers.

The Office is also empowered to investigate allegations of fraud or corruption in connection with the exercise by a person of a function of a public authority, assist an individual in legal proceedings where there has been a contravention or violations of the provisions of the Charter of Fundamental Rights and Freedoms, become a party to such proceedings with the leave of the court and initiate proceedings relating to the constitutionality of a law or provisions of a law.

If the Ombudsman finds, upon completing an investigation in any complaint or in an own motion, that a person has been treated unfairly or improperly and has been adversely affected as a result, then she will suggest an appropriate redress to remedy, mitigate or alter the adverse effect suffered.

In dealing with and resolving individual complaints, the Ombudsman always strives to bring about improvements in the administration and service delivery of public sector organizations based on lessons drawn from those individual complaints.

Vision

'A fair, open, accountable and effective public service'

Our vision is of a public service that is fair, open, accountable and effective and the Office of the Ombudsman has a central role to play in ensuring that public service decision-making processes are applied properly, transparently and equitably and with consistency across all public services.



Mission

We aim to achieve this vision by seeking to extend and improve the impact of our Office on the wider public service, by continuously improving the level of services we provide for those persons who bring their grievances to us. We also strive to ensure that our systems and processes are as effective and efficient as they can be.

To achieve this we must, firstly, build up the institution by recruiting trained and qualified personnel capable of fully delivering on the services expected of the Ombudsman.

Values

As a constitutional body, we preach, follow and adopt the fundamental principles of good administration, namely:

- Get it right
- Be customer orientated & show empathy
- Be open and accountable
- Act fairly and proportionately
- Deal with errors effectively
- Seek continuous improvement

More than a checklist, these principles provide a valuable framework to which all public service providers, including our own staff, should adhere in carrying out their duties.

Organisational Values

Our organisational values describe the qualities that our staff are expected to demonstrate when carrying out their functions. We expect all public service providers to have integrated similar values into their own decisions, actions, policies, processes, and systems and will consequently apply these same standards in reviewing any of their decisions and services.

1. **Independence** - We examine complaints, conduct reviews, and make decisions in a fair, objective, and impartial manner.



2. **Customer Focus** - We aim for excellence and professionalism in delivering our services. We strive to meet defined quality standards and continuously review our own performance to ensure that the customer remains at the heart of everything we do.
3. **Fairness** – We treat everyone with respect, dignity and fairness – values that are fundamental to our relationships with all our stakeholders and which also contribute to a healthy work environment that promotes engagement, openness and transparency.
4. **Empathy** – We understand that complainants come to us after having exhausted all other avenues open to them. Consequently, they may sometimes be angry and frustrated. We listen to them carefully to understand and remain sensitive to their concerns.
5. **Innovation** – We continuously review our performance and avail of best practices to improve and deliver a first class service and, thereby, enhance confidence in public service delivery.

Strategic Objectives for 2018-2021

The following three key objectives for the Office have been identified as primary enablers in the achievement of our vision.

- We will lead by example and drive improvements in the wider public service.
- We will deliver a customer-focused service that reflects our core values and of which we can be proud.
- We will develop and enhance our management and administrative frameworks to enable and underpin our objectives of improving the wider public service and delivering an excellent customer-focused service.

Key actions

The Office will achieve its objectives through the following key actions:

Building an Ombudsman institution

- Recruit trained and qualified investigators.
- Create the space and the institutional units that can better deliver the constitutional objectives of the Office.



- Provide advanced training for our staff in all fields of expertise within the limits of our financial resources, through stakeholders and external and local partners, to help us maximize our engagement with public service providers and improve the standards of administration.

Improving Public Services

- Influence improvements in public services by carrying out systemic investigations and raising awareness of service failure based on our findings/casework.
- Engage with all stakeholders through multiple approaches to improve the standards of administration in public service providers.
- Offer our perspective to public service providers through shared learning.
- Secure effective outcomes and change for complainants.

'Customer'-Focused Service

- Further develop our investigation/complaint handling skills in order to deliver the best service to our 'customers'.
- Simplify/increase options available to complainants for interacting with our Office, including improved online access.
- Ensure our quality standards are effectively measured using best practice metrics.
- Ensure that our communications with our 'customers' reflect our core values.

Enhanced Management and Administrative Frameworks

- Ensure we are working in the most effective way in terms of structures, processes, and procedures.
- Develop more effective use of digital technology to simplify the public's experience of public services, including our own and share information.
- Develop and implement case management systems that will support the delivery of effective and efficient services.
- Be recognised by others as a source of expertise in all of our areas of operations.